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STUDY

Policy Department B Structural and Cohesion Policies

EUROPEAN CINEMA ONLINE – PAST AND PRESENT

CULTURE AND EDUCATION

June 2008

EN



ЕВРОПЕЙСКИ ПАРЛАМЕНТ PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET
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Directorate General for Internal Policies of the Union

Policy Department B: Structural and Cohesion Policies

CULTURE AND EDUCATION

EUROPEAN CINEMA ONLINE – PAST AND PRESENT

STUDY

IP/B/CULT/FWC/2006_169/Lot03-C01-SC02

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Directorate General for Internal Policies of the Union

Policy Department B: Structural and Cohesion Policies

CULTURE AND EDUCATION

STUDY ON EUROPEAN CINEMA ONLINE – PAST AND PRESENT

STUDY

Content:

„Cinema Online – Past and Present” assesses the feasibility of establishing a pan-European film portal that could lead to more collaboration among film stakeholders in the EU and raise awareness regarding Europe’s cinematographic legacy. In a second part, the study assesses the challenges European film companies face with regards to benefiting from Video on Demand (VOD) and gives an overview of EU policy in relation to VOD.

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EXECUTIVE SUMMARY

I. Introduction

The European film sector has experienced significant changes brought on by digital technology. Across the EU, users can enjoy a film with the click of a mouse. Video on Demand (VOD) is the film industry's attempt to benefit from digital distribution. It will become a vital new revenue stream for film makers and should unlock the true potential of European film – nationally and internationally.

In the context of this rapidly developing environment, “Cinema Online – Past and Present” assesses the feasibility of establishing a pan-European film portal that could lead to greater collaboration among film stakeholders in the EU and raise awareness regarding Europe's cinematographic legacy. In a second part, the study assesses the challenges European film companies face and gives an overview of EU policy in relation to VOD.

II. Feasibility Study for Pan-European Film Portal

The Project Proposal

The first part of the study assesses the conditions for establishing such a portal and develops a project that “would make a practical contribution to making Europe's cinematic legacy better known”. Given a number of preconditions that have to be taken into account (cost considerations, fragmentation of film rights, interests of commercial VOD operators, national competences) it develops the business model of a pan-European VOD portal for educational purposes. This portal would give users access to a selection of films and offer a representative collection of educational material in order to foster media and film literacy across the EU. Some defining features of the portal include:

- Availability of a film from most EU Member States, representing their cinematography and heritage, in several or all EU languages (subtitled).
- Individual users can download or stream films for free and – depending on flexible usage-licenses for each film – can use selected material for “ripping, mixing and re-using”.
- Diverse educational material, including interviews with up and coming film directors that comment on the past work of a featured film maker as well as state of the art e-learning modules to develop and test the knowledge of users.
- A film literacy officer will reach out to film literacy critics, film schools, film archives and community centres across the EU in order to foster collaboration.
- A range of new networking and Web 2.0 technologies would ensure that the portal meets the interests of today's internet generation and facilitates exchange and communication with users.

Similarly to contemporary progressive content delivery platforms the VOD portal would be linked to the dynamics of online entertainment – connecting various communities of interest, making use of network effects when reaching out to new audiences and accommodating latest trends in online film consumption.

Feasibility and Implementation

How could such an idea become reality? To gather an attractive and representative catalogue of films from across Europe strong collaboration with national film agencies and national film archives, which can help to identify potential suitable titles, is important. Indeed, the feasibility study shows that approaching the establishment of a pan-European portal by using a pre-defined “wish-list” of film titles is unrealistic due to the fragmented nature of film rights in Europe. Therefore, KEA contacted the European Film Agency Directors network to assess national interests in the project idea¹. The general reaction of the network was very positive: A large majority of national film agencies would support a pan European VOD initiative for educational purposes.

On the basis of this positive feedback two scalable options for the establishment of a VOD portal are presented. The two versions primarily distinguish themselves by the number of subtitled language versions available for each film, the robustness, scope and flexibility of their technological infrastructure as well as by resources spent on marketing/promotions and the running of the platforms. This of course leads to two differently priced options:

- Option One (larger scale): €1 737 707
- Option Two (smaller scale): € 899 013

The main body of the study, as well as the final recommendations, outline several reasons why the establishment of such portal would be justified from an EU public interest point of view.

III. EU Support for Video on Demand and the Wider Context

The second part of the study outlines the current state of the European VOD sector and considers policy options to enable European film companies to better benefit from digital distribution². “Given that the study is, first and foremost, a feasibility study” and the requirement is to cover “EU policy as a whole”, this part cannot examine each policy and support programme in detail. It rather attempts to give an overview and illustrates some of the most pressing issues at hand and evaluates policy options with a view to effectively benefit the European film sector.

Analysis of Current Situation of VOD Market

A short market assessment shows that large entertainment and ICT companies increasingly invest into launching VOD portals and that the number of European initiatives – most of which are nationally focused – increases each year. However, VOD is not a profitable business sector yet. Legitimate offers compete with illegal peer-to-peer offers which make films available for “free” (excluding connection fees)³. Despite the fact that there is currently a very small VOD market in the EU (which primarily exists of non-European films) analysts’ projections are positive and predict that related revenues will reach €1 billion in 2010.

¹ The EFADs constitute an informal network of national agencies responsible for implementing national film policies and for distributing support for film production and distribution in the Member States of the European Union.

² In accordance to the brief, the study primarily looks at Video on Demand from a film industry perspective.

³ According to a study by the Centre National de la Cinematographie (CNC), in 2006, 94% of all films in France were available for illegal download or streaming before reaching DVD retail or rental.

KEA is optimistic about the future of VOD and anticipates that it will displace DVD sales and be an additional window in between pay-TV and free-to-air broadcasting. Moreover, VOD is a great opportunity for European film since digital distribution allows European film companies to break free from their marginalised market positioning. It can enable them to access the international market, act independently of dominant middle men and cash-in directly from consumers looking beyond the limited offering of local cinemas or DVD rental and retail shops.

In this context, European film companies could better benefit if they find ways to access emerging national and international VOD platforms on fair terms and if they facilitate their emergence by easing the licensing process.

Challenges and Opportunities for the European Film Industry

The challenges of the European film industry, which is characterised by small and medium sized enterprises (SMEs) that rarely produce a slate of films, are well known and market conditions are increasingly difficult:

- The European film market is dominated by Hollywood companies (62.7% of EU market share in 2007⁴) which retain the majority of global film revenues at theatrical or broadcasting levels and whose control over traditional distribution makes access to market for European film companies more difficult.
- The film industry has to deal with poor levels of rights enforcement on the internet regarding the illegal downloading of films over peer-to-peer networks in certain Member States.
- The industry's production and marketing costs are getting out of hand. Film therefore is increasingly a difficult business proposition for financiers. The credit crunch is likely to make the financing of ambitious films more difficult.
- The DVD market is now in decline and cinema admissions are levelling off throughout Europe.
- In relation to VOD, the European film industry faces the challenge of testing new business models and reaching new markets at a time when digital distribution does not guarantee returns on investment.
- Finally, film professionals require the technological understanding to really influence current developments in the area of VOD (e.g. technological standardisation and research)

However, European film makers are well positioned to make the most of VOD:

- Their size enables them to adapt more quickly to the new realities of digital distribution.
- The window of opportunity to influence future developments (technological and economic) is open. Now is the time that European film makers can ensure that market dynamics of the future take into account the specific nature of the European industry (languages, territorial licenses, etc.).
- The preferential EU regulatory and support regime granted to films can help European film companies to adapt.

⁴ Focus 2008, World Film Market Trends, publication European Audiovisual Observatory.

- Finally, the sectors entrepreneurial character may help European film companies to overcome marginalisation. Collectively the European film industry commands a 25% market share thus making it a major player – on the condition that it acts collectively to influence market development

Policy Recommendations

The European film industry is experiencing a time of tremendous change as traditional market mechanisms currently fail to deliver. However, new business models that could help to stabilise the film sector are yet to be found. Film companies feel “let down”. On the other hand, technology companies argue that content owners are too reluctant to embrace new technologies. Independently of these arguments, a considerable exploitation of intellectual property and creativity is taking place without payment. This destabilises the cultural industries (music, cinema, publishing) that are going through considerable upheaval. Public policy is therefore required in order to address imbalances created by new technologies as well as to help creators and industry stakeholders to adapt to the new economic paradigm.

- Media 2007 should focus on VOD as part of its endeavours to support pan-European distribution. It should promote more trans-national collaborations between platforms and reward collaborative ventures across borders. Projects aimed at facilitating better licensing practices to digital delivery platforms as well as training projects developing VOD expertise should be supported.
- Increase the involvement of European creative content producers in EU-ICT research and innovation programmes: as identified by the BONO Report closer collaboration between ICT-stakeholders and the cultural and creative industries is needed⁵. This is especially the case with regards to existing ICT-research and innovation programmes such as FP7 and the Competitiveness and Innovation Programme that should reach out to content producers.
- Ensure collaboration with ISPs to enable monetisation of online exploitation: the European Parliament should be instrumental in getting different industries to collaborate more closely in order to tackle piracy. The dialogue promoted by the European Commission as part of the European Film Charter (May 2006) has shown its limits. The film industry which is taking the view that it is unfairly subsidising broadband roll out and requests for actions to safeguard the interests of the creative community. The policy of “graduated response” should therefore be further explored.
- Better monitoring of films access to broadcast and digital distribution networks: the European Parliament should call on the European Commission to organise an independent reporting on the implementation of the AVMS Directive. A similar independent reporting should take place to monitor availability of European films on online platforms.
- Finance: the 2000 agreement between the European Investment Bank and the European Commission whereby the bank committed to increase its investment in audiovisual projects as part of the Lisbon strategy should be revived.

In summary, KEA argues that the sector needs to provide an attractive legal alternative to the illegal downloading of films on peer-to-peer networks (it should be made easier to buy than to steal). At the same time, the regulator should help to fight against piracy by encouraging collaborations between the content industries and providers of broadband connections. In the

⁵ Report on Cultural Industries in Europe, (2007/2153(INI)), CULT Committee.

meantime, European film companies need to act decisively to influence market developments and test out new business models in order to access new national and international markets. A multi-faceted strategy is needed to ensure that the European film industry does not experience the same fate as the music industry whose turnover has declined by 50% in less than 5 years.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	iii
I. Introduction.....	iii
II. Feasibility Study for Pan-European Film Portal	iii
III. EU Support for Video on Demand and the Wider Context.....	iv
1. FEASIBILITY STUDY	1
1.1 Description of Project Idea	1
1.2 Testing the Feasibility of Creating a Pan-European Film Offer	4
1.3 Operational and Technological Considerations	6
1.4 Presentation of Project Options for Portal	10
2. EU SUPPORT FOR VOD AND THE MARKET CONTEXT	15
2.1 The Promise of Video on Demand.....	15
2.2 The Current Market Environment.....	16
2.3 VOD Challenges Faced by the European Film Sector	19
2.4 The Need for a New Mindset.....	26
2.5 EU Regulations, Policies and Support for Video on Demand	27
3. CONCLUSIONS AND RECOMMENDATIONS.....	35
3.1 Feasibility of a Pan-European Film Portal	35
3.2 EU Regulation and Policy Relating to Video on Demand.....	36
ANNEXES.....	43
Annex 1: The Assignment.....	43
Annex 2: Methodology.....	45
Annex 3: Consultation List.....	47
Annex 4: Members of the EFADs Network Contacted for Survey	49
Annex 5: Requested Wish-List of Films per Member State To Illustrate Potential of Portal	51
Annex 6: Questionnaire used For EFADs Survey.....	53
Suggestion of Feature Film from your Member State	53
Availability of Additional Information	54
Context	54
Annex 7: Note on Budget Estimations for Feasibility Study	55
Annex 8: Budgets for Both Project Options.....	57
Annex 9: Further Support Schemes of Relevance to VOD	65

1. FEASIBILITY STUDY

1.1 Description of Project Idea

In order to promote Europe's cinematographic legacy, the brief requested a feasibility study regarding the establishment of an Internet based pan-European film portal. Taking into account several requirements that such a portal would have to fulfill, a project idea was developed on the basis of the study brief and then tested against its operational and technological feasibility. Finally, different options regarding the implementation of the project idea were assessed⁶.

There are several factors that had to be taken into account with regards to the design of the potential project:

- The portal would have to promote the cinematographic legacy of a wide range of EU Member States to illustrate the European dimension of the project.
- A publicly funded VOD portal would have to deliver a public-interest element and should not directly compete with existing commercial operators in order to be accepted by industry.
- A project would have to complement projects supported by MEDIA's VOD scheme.
- An EU-funded portal would have to build upon existing competences in the Member States and foster cooperation between national stakeholders.
- To achieve the ambitious goal of establishing a pan-European VOD-offering, a practical solution needed to be found to deal with the challenge of rights fragmentation⁷.

In light of these challenges the core project idea would therefore be to promote European cinema's legacy and foster EU citizens' interest in European film by establishing a non-commercial pan-European VOD portal for educational purposes. The portal would give users access to films from ideally all EU Member States and showcase selected titles reflecting European cultural diversity. A further chief objective would be to foster film-literacy across Europe. The portal would host a range of additional information resources and e-learning tools to achieve this.

1.1.1 The Portal's Film Offering

The heart of the portal would initially be a selection of approximately 24 - 27 films, although further expansion would be possible⁸. The vision of the project would be to make available at least one film per Member State. As requested by the brief and in order to illustrate the potential character of such a portal, a list of films illustrating Europe's diverse film culture was drafted which includes films from most Member States (see appendices). However, research and expert consultations confirmed that it would be rather impractical to approach the establishment of a pan-European film portal from such an angle due to the challenge of territorial licensing. For different reasons highlighted in the section covering VOD challenges, it is rather unlikely that territorial VOD rights for each film on the list could be acquired easily – even on a non-

⁶ A detailed breakdown of the European Parliament's study brief and an outline of KEA's approach to conducting the assignment is included in the appendices.

⁷ General challenges relating to VOD and EU film are further discussed in section 2.

⁸ The reason for this number is based on our survey with the EFADs network which will be explained at a later stage in the study.

exclusive basis. The “wish list” was therefore primarily used to illustrate the potential profile that a portal could have when liaising with potential partners and interviewees.

In this context, it became clear that in order to overcome the challenge of rights fragmentation and in order to implement the project, strong collaboration with national stakeholders (such as national film agencies or film archives) would be required. These institutions in some cases possess sub-licensing rights and could make selected films available across Europe or may alternatively be able to identify right holders or institutions that could support the initiative (e.g. public service broadcasters, producers associations, etc.). As the goal of the assignment was to conceive a realistic project, it quickly became clear that national stakeholders were likely to play a key role in identifying films that were most suitable for the initiative and their potential involvement would therefore be subject to the feasibility assessment. In this context, collaboration with European associations such as the European Broadcasting Union industry would most likely have to be developed in order to bring national stakeholders on board.

1.1.2 Audience and Access

It was decided that the portal could be used by the general public and by people from all age groups. However, its look and feel would primarily be targeted at younger people. Furthermore, the portal’s services could be used by individuals as well as by institutions that showed an interest in the initiative, such as schools, film schools, further education institutions, community centers, etc. Access to the 24 - 27 initial films and additional content would be free of charge (although connection fees of course have to be paid). This would sufficiently distinguish the service from commercial VOD offers. A service free of charge might also make it easier for some national stakeholder to make available one or two important titles representing their country’s film heritage for which they possess EU-wide VOD rights.

The portal should provide its content for download and in streaming formats. Different options pertaining to the usage license for films could be offered: this could range from flexible regimes that allow “ripping, mixing and re-using” content to using established ways of protecting and licensing use. A trimmed-down option of the portal could primarily focus on streaming the films as this would require less DRM and technical protection measures and would be easier to establish⁹.

1.1.3 Educational Features

In conjunction with all the vital information about each film (biographies of directors and actors, bibliographies, film synopses, etc.) there could be a range of content features and e-learning applications available, which would help the portal to achieve its film-literacy objectives:

- Reviews regarding each film: these could include old press articles as well as digitised radio and television features stored in national archives.
- There could also be a critical review of each film which has specifically been developed for the portal. Such individually produced content could touch upon overarching topics that were addressed for each film (e.g. political and social climate during the time of production, artistic and aesthetic influences during the time, etc.).

⁹ Indeed, consultation with key VOD operators in Europe showed that there seems to be a trend among these stakeholders to consider whether the making available of content in streaming format is the way forward in the future, considering that DRM restricts ease of use in several ways.

- Furthermore, interviews and news features could be made available which linked today's discussions to the films available on the portal. This could, for example, include an interview with an up and coming film director that commented on the past work of a film maker. It could also include a contemporary review of a topic that has already been portrayed in one of the films created in earlier times.
- A film literacy officer who would identify and source this material would most likely have to be hired for the project. Such person could also conduct reach out work and connect to film critics, media literacy experts and film schools across Europe that might contribute to the project.

Beside the above mentioned types of content an online learning application could be integrated in the portal. This could be done by acquiring a license for the use of a commercial e-learning authoring and publishing solution or by integrating an open source e-learning solution on the website. Online learning modules could relay some of the above information as well as more theoretical aspects of film theory in a more didactic fashion. Furthermore, users could undertake tests after having studied the diverse material on offer. There are several options regarding how such learning modules could be created and integrated (in-house or sub-contracted to online learning specialists, etc.). However, the film literacy officer would most likely play an instrumental role in making this possible.

1.1.4 Community Building

The VOD portal would be accessed via the internet and the service should therefore make use of new networking and Web 2.0 technologies that can increase interest and lead to a closer tie-in of users and audiences:

- For example, users should be able to register and set up their own profiles to comment on and rate films and the educational content.
- Blogs, social rating mechanisms, as well as various features to compare tastes – nowadays the standard offering of social networking sites – should be part of the website or at least an integrated option through partnerships with other providers.
- Films as well as other content would be linked with detailed metadata to allow users to find related content easily and navigate through the portal using different paths.
- The portal could possibly cooperate with other online media platforms and communities that allow users to create their own video content (“user generated content”).

Today's media consumption occurs increasingly in networked environments where users recommend content among each other and discuss its meaning. Facilitating this exchange should therefore be a priority for the portal. Furthermore, a social networking element could also increase the reach for the platform exponentially due to network effects.

1.1.5 Key Justifications

There are several reasons why such a project idea would be in the public interest and could qualify for support from the EU and national stakeholders:

- **Media and film literacy:** increasing European citizens' understanding of film equips them with media literacy skills required to consume and produce content in a critical fashion. This is a key requirement to foster citizenship in today's information society and a policy objective of the EU.

- **Cultural diversity and dialogue:** giving audiences access to a range of European films also reinforces cultural identity and fosters cross-cultural understanding in Europe. Both are important objectives of the current Year of Intercultural Dialogue and, for example, the i2010 Digital Library Initiative.
- **Promotion of European values:** in a different context but related to the above, the establishment of a portal would foster the development of a common cultural identity among Europeans and could eventually also promote European values in the EU and beyond EU borders. Related objectives of a European Agenda for Culture have been laid out in the European Commissions Communication on Culture in a Globalising World and identify cultural as key in order to foster dialogue in the EU as well as in the EU's external relations¹⁰.
- **Strengthening the EU film sector:** furthermore, enabling citizens with the critical skills to interpret EU film may in the long term also foster audience demand in European cinema. It can therefore lead to strengthening the European film sector in a commercial context, which is a key policy priority of national governments and the European Commission.
- **A symbolic project:** finally, the establishment of a public non-commercial VOD-portal would illustrate Europe's political will to overcome the structural deficiencies of Europe's film sector and foster the development of a pan-European VOD sector in the long-term.

1.2 Testing the Feasibility of Creating a Pan-European Film Offer

Following this initial outline of the envisioned project, the idea was assessed from an operational and technological perspective. Different options regarding the portal's scope and technical requirements were examined and possible alternatives were assessed.

Research and consultations that the greatest opportunity to really succeed in such an endeavor would be to collaborate with national film agencies and film archives. As indicated, these stakeholders were considered to be in the best position to identify films that could contribute to the purpose of the project while still being available for EU-wide online distribution.

In order to establish the feasibility of the idea, these stakeholders' interests were therefore tested: an outline of the project idea was presented to the chair of the European Film Agency Directors network (the EFADs). The EFADs constitute an informal network of national agencies responsible for implementing national film policies and for distributing support for film production and distribution in the Member States of the European Union.

Based on the chair's support for the feasibility study the project idea was circulated among the 24 members of the network. In a second step, a short follow-up questionnaire asking each national institution regarding their interest and support for a potential project was sent out by e-mail. The e-mail survey was completed with phone consultations and interviews with further film industry stakeholders across Europe¹¹.

The overall reaction to the project idea was generally very positive. The majority of members contacted stated they would support a pan-European VOD initiative for educational purposes if it was to be implemented (15 out of 24 confirmed support, 6 did not reply, 3 rejected the idea on grounds of feasibility). Yet, because of the short time available, only a few institutions managed

¹⁰ See [Communication on a European agenda for culture in a globalizing world](#) (accessed April 2008).

¹¹ The letter to EFADs as well as a sample questionnaire is included in the appendices.

to identify a film title available for EU-wide VOD distribution (9). Most were nevertheless confident that their respective title could be made available if the project was to be implemented.

The following matrix indicates the level of expressed interest by national film agencies and archives across the EU:

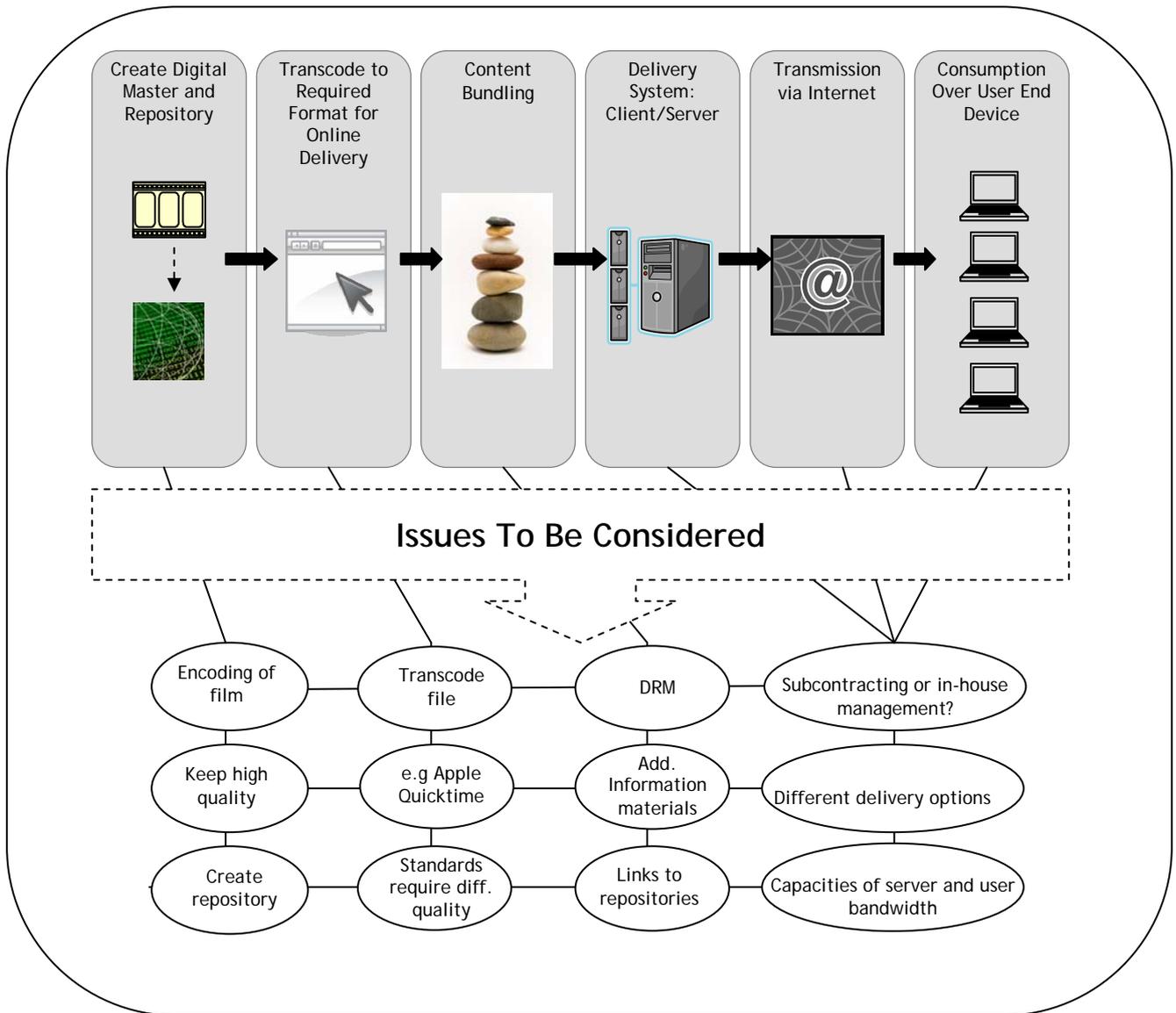
Country	At	Be	Bg	Cy	Cz	De	Da	El	Es	Et	Fi	Fr	Hu	Ie
Enquiry made	na	X	X	X	X	X	X	X	X	X	X	X	X	na
Indicated support			X	X	X	X	X	X	X	X	X	X		
Title identified				X	X		X	X		X	X			
Country	It	Lt	Lu	Lv	Mt	Nl	Pl	Pt	Ro	Si	Sk	Sw	Uk	-
Enquiry made	X	X	X	X	na	na	X	X	X	X	X	X	X	-
Indicated support		X		X						X		X	X	-
Title identified		X												-

Despite the use of a list of films to illustrate the potential profile of a pan-European portal our consultations showed that the ultimate nature of the service would very much depend on the willingness and enthusiasm of national partners to identify and make available an attractive title. The survey exercise also intended to examine what kind of titles national stakeholders could potentially contribute on a pan-European basis. In this context, replies illustrated a range of interests. Some institutions would try to make available a renowned, perhaps classic title that has already received much public exposure in the past. Some would try to make available a more recent national film that had not received much attention internationally but was nevertheless important for the country's film culture. Others would focus on identifying a genre film characteristic for the Member State. It also became clear that the role of the project manager for the portal would be vital. Questionnaire and e-mail responses illustrated that national stakeholders were keen to collaborate but that they would anticipate a high degree of guidance and assistance from the project coordinators if the idea was to be implemented.

1.3 Operational and Technological Considerations

There are several operational and technological considerations that have to be taken into account when developing a pan-European VOD portal. While the scope of this assignment did not allow a large amount of first-hand investigation into technological options, this section lists some key issues that need to be considered. The following illustration identifies core operations and components involved a pan-European VOD portal - from the digitisation of a moving image to its consumption.

1.3.1 Illustration of Key Operational and Technical Issues



Source: KEA: Diagram of Operational and Technical Issues.

Based on this diagram, the following sections briefly assess key issues that have to be taken into account when choosing different components for a future service.

1.3.2 Digital Masters and Creation of Content Repository

Depending on the degree of collaboration with national stakeholders the VOD service would have to provide for digital encoding, transcoding and storage: any VOD portal requires digital film files, which it can distribute to end-users and intermediary operators. In order to ensure that films can be transmitted via several communications networks (e.g. Internet Protocol Television (IPTV), mobile communications, Internet, etc.) an analogue film print is encoded into a digital file. It is important that this file is of high quality (such high quality version of the file is called the "Digital Master") to ensure that it can be adjusted to the different quality requirements of different formats and communication networks.

IPTV, for example, requires higher quality standards than the moving images that are viewed on mobile handsets. In this context, the proposed VOD portal may initially pool films that have already been encoded into a Digital Master, analogue prints or even digital files in formats only suitable for online distribution. In any case, the capability to encode analogue prints as well as to change ("transcode") Digital Masters into different digital formats (MPEG, Quicktime, etc.) might be required. Moreover, the establishment of a Digital Master repository, a pool of high quality files, might have to be considered in order to allow the closing of potential future content-sharing partnerships with other services.

In this context, there might be several options with regards to the implementation of a project:

A1	Description: a stand alone VOD service that would offer digitisation and storage services and could thus collaborate with right holders and film archives across Europe that cannot offer digital versions.	Consideration: such an option would require high initial technology investment to provide digitisation services. It would primarily be feasible if the portal was to include a relatively high number of titles at some point.
A2	Description: the project would offer all digitisation and storage services to national partners and right holders but would most likely collaborate with an existing service provider to make these services available.	Consideration: such an option would require medium initial investment but still require extensive project management as the project coordinator would have to liaise between national content providers and the technology service provider.
A3	Description: the project would be conducted in partnership with national stakeholders (film agencies or archives, etc.). It would require these stakeholders to provide a digital master and/or the formats required for VOD distribution (e.g. MPEG, Quicktime, etc.)	Consideration: this would require less initial technology investment. In the context of a European project the national partners might be able to consider the contribution of the digital files as a form of co-investment.

Hybrid models integrating the three options would be possible.

1.3.3 Platform Considerations

While the brief suggests the establishment of a website with an European film offer, alternative transmission options should briefly be assessed.

B1	Description: a digital on demand channel that is either delivered via cable TV, internet protocol television or satellite transmission.	Consideration: while costs are increasingly declining for establishing such channels they are still much higher than those for establishing an online VOD service due to the costs involved in acquiring spectrum licenses or satellite transmission fees. This option is out of scope for the limited number of titles to be offered.
B2	Description: a Video on Demand channel based on the open internet.	Consideration: fewer costs involved than for the above option. Moreover, internet-based delivery seems the most feasible option to reach most EU territories and to offer the service free of charge ¹² .

1.3.4 Outsourcing vs. In-House Operations

Virtually all of the steps identified in the diagram can be subcontracted to one or multiple service providers (existing portals, play out centres of broadcasters, etc.). Given the modest initial scope and multi-territory nature of the project, subcontracting may be an appealing alternative to consider in several respects.

C1	Description: all services (digitisation, encoding, metadata tagging, DRM services, website maintenance, subtitling, translation services, public relations, editorial services, development of online learning material, etc.) are provided in-house.	Consideration: while the costs for such a service would be significant, the project coordinator would maintain full control over the quality of the service as well as the ability to further expand and cooperate with other portals.
C2	Description: some major services – e.g. digitisation, hosting, subtitling, etc., would be sub-contracted by the lead coordinator of the project.	Consideration: this would require less investment due to the economies of scale of service providers (i.e. the films could be hosted on an existing VOD server, etc.).
C3	Description: the project would be coordinated by a small management team and most services (including, for example, metadata tagging, content development for educational services) would be subcontracted to technological and content service providers.	Consideration: this option would not differ greatly from C2 in terms of costs involved. The institution that might manage the project could eventually lack the institutional resilience to deliver such an ambitious project.

¹² While the challenge of the digital divide in the EU cannot be part of this short assessment it should be taken into account that broadband penetration differs across the EU and that citizens in some Member States will find it easier to benefit from a VOD portal than those in others.

1.3.5 Interoperability and Ease of Use

The diagram includes some elements that may appear too complex and laborious at first sight if one considers the establishment of a comparably modest internet-based VOD portal (compared to commercial providers). However, given potential future interoperability with other services as well as the potential integration of further films such different options should be considered.

For example, content bundling – the development of different packages of content which may include grouping several films together under a theme and linking them to certain additional information (e.g. training sessions, articles, etc.) – is the first step that would need to be taken if any content would be licensed for delivery on other platforms. Similarly, the project should look into assessing the latest trends with regards to meta-data tagging and apply these to a certain degree.

Meta-data (in short: data about data) helps users as well as other online services to retrieve films and other content and enables search in heterogeneous content repositories. While such data may not have to be detailed in order to facilitate efficient searches and data retrieval on the closed platform, it is essential in order to allow people who use other services to discover the films. Given the increased interdependency between online repositories of content it would therefore be advisable to enrich film files with a sophisticated set of meta-data. Similarly, the same approach should guide the choice of a Digital Rights Management (DRM) solution for the portal. Again, it would be advisable to select a technology that is scalable and flexible enough to facilitate interoperability with other commercial and non-commercial services on the internet.

D1	Description: sufficient metadata tagging should be facilitated to ensure future interoperability and the ability to search in heterogeneous data environments	Consideration: similarly to the options above, metadata tagging can be outsourced. However, metadata should also be updated frequently.
D2	Description: in the case of a download to own service, DRM and technical protection measures need to be continuously updated to ensure security of service.	Consideration: using existing DRM and Technical Protection Measures (TPM) software as part of a VOD offering requires a certain degree of training. This should be considered in the budget or DRM and TPM services should be outsourced.

1.3.6 Delivery Issues

There are several technical issues that have to be taken into consideration with regards to transferring the digital film file from the server to the user's device. These include the bit-rate of delivery, the capacity of the Internet provider's connection as well as the bandwidth of the user's internet connection. In the context of transferring content on the internet, a UK Film Council commissioned study identified 250Kbits/ second – 22 Mbits/ second as the range of delivery capacity that is nowadays common. This indicates the significant range of capacities that exist and should be taken into account by the service. With regards to server capacity, the project should consider making use of a content delivery network which would enable faster data delivery to end users by storing data on several mirror-servers. As indicated by the UKFC study "no media delivery project of scale should consider the operation of a client/server model

which does not include the use of such a content delivery network”¹³.

An alternative to the implementation of a "traditional" server/client delivery model such as the one described above would be the implementation of a peer-to-peer model, where content would be stored and managed in a decentralized manner. Contrary to public opinion, this approach could also enable secure content delivery (it is, for example, used by Sky’s VOD service in the UK).

E1	Description: use server/client model to distribute content to end-users.	Consideration: server capacity should be flexible enough to allow for great demand at peak times.
E2	Description: use of a peer-to-peer delivery model to distribute and management the service.	Consideration: this option would only be required for a very large service and is out of scope for the envisioned project.

1.3.7 Subtitling

An important aspect of the study is to assess to what extent a pan-European VOD portal could overcome existing language barriers in the EU. While it would be unlikely that subtitles in most EU languages would be provided for an unlimited number of films on the portal, the option of including most language options for the initial 27 films should be considered and weighted against a less laborious approach.

E1	Description: a portal that would provide all 27 films in the 23 official languages of the European Union (as requested by the brief) would result in 621 subtitled versions.	Consideration: such endeavor would translate into significant setup costs. On the other hand, it would certainly set the project apart from other initiatives and provide real European value.
E2	Description: a less laborious option would be to translate all 27 films in the three working languages of the EU as well as in an additional number of other languages (subject to choice).	Consideration: this option would certainly decrease setup costs but also limit the trans-national character of the initiative.

The above list of options illustrates the choices that will have to be taken when deciding on how to implement the project idea. It should be noted that some of the choices regarding the final nature of the platform will also depend on how the VOD service would be implemented by EU institutions. For example, if the project was to be launched in the context of a European call for tender it could be natural to give the task of implementing the service to a number of different partners. On the other hand, it would also be possible to secure a contract with one organisation that would then be responsible for delivering all elements of the project.

1.4 Presentation of Project Options for Portal

Taking into account that the proposed VOD portal could be established in a number of different ways, two options with related estimated costs for establishing the service as well as running it for one year will be suggested in the following. A short outline of how the costs were estimated is included in the appendices.

¹³ UK Film Council Study of 2006 by Screen Digest/Magic Latern (accessed March 2008).

Option One

Option one would be a stand-alone VOD service that offered most operations and services required to make films from all EU Member States on an educational VOD platform available. The VOD platform and all related educational elements would be centrally managed (and also to some extent developed). The service would initially consist of 24 - 27 or more EU films and additional information material over time. Although, it would have the ambition and capacity to make available a much larger amount of titles and to cooperate with other existing portals over time. The key benefits of Option one would be its ambition to become a renowned resource for film literacy activities across Europe. It would also be a strong symbol for the emergence of a pan-European VOD sector in general. While significant investment would be necessary to establish a robust solution, the portal would closely cooperate with national stakeholders (film agencies and institutes, archives, film schools, etc.) to identify suitable titles and educational material.

Key Features That Distinguish This Option

- The digitisation process and the platform would be coordinated by a central team.
- The setup period would therefore take approximately one year.
- As digitisation services for analogue film prints would be coordinated by the team (but possibly delivered by a subcontractor) – the project coordinator and the technology officer would spend a considerable amount of time liaising with national stakeholders during the setup phase.
- In general, the central team would spend considerable time creating synergies with partners and seeking further partnerships at national and local level to promote the portal.
- The portal would offer the initial 24 - 27 films in all 23 EU languages. Subtitling would also require intensive coordination by the team.
- The VOD asset management system and the website would be developed in-house by freelance designers and developers. DRM and TPM services, metadata tagging, and technical maintenance would also be provided by freelance professionals who would work at the head offices on a frequent basis.
- Storage of the films and all other data would be outsourced to a technical service provider.
- An Open Source online learning management tool would be integrated in the website.
- Custom made online learning material for the portal would be commissioned/developed. National stakeholders and educational institutions would be actively recruited to contribute to the project.
- A major part of the project would be its links to other online film initiatives.
- The project would rely on specialised PR partners that would promote the portal in each Member State (focusing on teachers, lecturers in film schools, magazines of national film agencies, etc.).
- The portal would have the capacity to integrate films from other services and its content would be tailored so that cooperation with other portals was possible.
- The project could be implemented by a single institution that would subcontract several activities to content and technology providers or be conducted by a network of partners. While the institutions could bring national stakeholders as direct project partners on board

this would not need to be a binding requirement (as is the case in Option).	
Cost Estimate	
Setup costs:	€911 800
Costs for year one:	€673 500
Total:	€1 737 707 (incl. 15% contingency)
Option Two	
<p>Option two would be smaller but nevertheless an ambitious version of a pan-European portal. Its main benefits would be its shorter setup phase, reduced costs and an even stronger integration of national stakeholders. The portal would also make available 24 - 27 films from Member States although not likely in every official language. It would possibly have less capacity to develop into a large-scale VOD portal that cooperated seamlessly with other repositories in the future - the technical infrastructure underlying the service would be less sophisticated.</p>	
Key Features That Distinguish This Option	
<ul style="list-style-type: none"> • The project could be initiated by a call for tender for a European project which would require a certain amount of project partners from different Member States as well as a level of co-financing from these partners. • Such consortium could, for example, include several film institutes, film archives, an existing VOD operator or technology provider, as well as institutions or training centres specialised in media literacy (this list is only exemplary and non-exclusive). • Each partner could contribute several services required to establish the project (possibility to account this as co-investment) • The national partners would provide the project with digitised versions of the films to be included on the platform. • A website would be created for the portal which would include similar features as the one in Option one. However, hosting and maintenance services for the films and the asset management system would not necessarily be outsourced to a commercial operator. It could be facilitated by a project partner which would most likely reduce fees for hosting and maintenance. • The setup phase of the project would be between 6 and 9 months. • The educational aspect of the service would be limited to integrate existing film literacy-relevant content and learning materials from Member States and other initiatives. A key role of the film literacy officer would be to source such content and liaise with potential institutions that might license content to the portal. • The films would be made available in the three working languages of the EU plus in two additional languages (languages to be decided by the country of origin of each film). • A key task of the central coordination team would be to create synergies between existing initiatives at national level as well as to promote the service among potentially interested institutions. However, fewer marketing and PR services would be commissioned for the project. • This option would be an efficient solution to showcase the potential benefits of a pan-European offering and to promote the cultural diversity of EU film. It would be less complex to setup the portal and the full benefits would be more immediate than those of 	

Option one (albeit fewer).	
Cost Estimate	
Setup costs:	€409 750
Costs for year	€372 000
one:	€899 013 (including 15% contingency)
Total:	

2. EU SUPPORT FOR VOD AND THE MARKET CONTEXT

The following sections of the study examine the challenges faced by European cinema in becoming competitive in the VOD market and assess related EU-regulations, policies and support. They provide the economic and regulatory background to the previous feasibility study. Given the limited scope of the assignment, this second part provides an overview and only highlights the more pertinent issues in more detail.

Cinema enjoys a high degree of consideration by policy makers and the general public throughout Europe due to its cultural and economic importance. According to Media Salles, European cinema generated box office returns of 5.2 billion in 2006¹⁴. Furthermore, US cinema figures illustrate the economic significance that film can have for a country. World wide box office returns alone for US films in 2007 were \$26.7 billion¹⁵. This makes film one of the largest export goods of the US.

Yet, digital technology is rapidly changing the nature and the economics of the film industry. As this section will show, the VOD market has the potential to become an important source of revenue for European film companies even though it may still be in its infant stage. To some, VOD promises to finally unleash the market potential of European film and to reward the creativity and diversity of Europe's film makers.

For the purpose of this study, VOD is defined as follows: it can be understood as a system that allows users to access films and other audiovisual content over an interactive communications system (the Internet, digital satellite networks, cable, etc.). Content can either be streamed, allowing viewing in real time, or downloaded, which enables users to store the content on an end device. An important characteristic of VOD is that it makes programming schedules of traditional media services (such as analogue television) obsolete. Users can access a range of content anytime – “on demand”.

2.1 The Promise of Video on Demand

VOD is a nascent market full of opportunities for the audiovisual industry and the market projections for the sector reflect this optimism. Despite the fact that a steady increase of online film revenues in both the US and the EU have been noted over the past years the sector still has very little economic relevance at present. Internet-based VOD revenues for the EU, including non-European and European film, in 2006 were estimated to be approximately €18,7 million. However, market analysts predict that these revenues will reach approximately €1 billion in 2010¹⁶. In the light of stagnating consumer demand for retail DVDs since 2004, decreasing turnovers in DVD rentals since 2006, as well as the popularity of music and video downloads, VOD is to become an important revenue generator for the audiovisual industry^{17/18}. Indeed, the development of digital delivery platforms – whether on IPTV, mobile, or free to air platforms increases the demand for cinematographic works.

¹⁴ See Media Salles statistics, <http://www.mediasalles.it/ybk07adv/> (accessed April 2008).

¹⁵ MPAA, Theatrical Market Statistics Study, 2007.

¹⁶ 2007 Study on Interactive Content and Convergence, figures quoted from Screen Digest research.

¹⁷ The 2007 Study of the European Audiovisual Observatory on film and home video showed that overall consumer spending on DVD has decreased to €11.5 billion in 2006. It also studies decreasing revenues for DVD rentals in Europe (see pp. 80 ff).

¹⁸ Of course, piracy is another big factor affecting this development. It will be reviewed at a later point in this study.

VOD's main promise lies in the fact that digital technology provides film companies with the opportunity to reach new audiences – both, in domestic and international markets. It also challenges important market mechanisms which have so far constituted the basis on which films were financed or distributed by questioning release windows and the role of traditional intermediaries in the future value chain.

Broadband networks allow European film companies to challenge existing market structures and develop their own distribution capacity. By becoming more independent and by acting collectively European film companies may be able to carve out a larger slice of revenues in the long term. Additionally, VOD allows European film companies to market their products to a larger international audience over an unlimited period of time, thereby overcoming bottlenecks that exist in distribution (both theatrical and television) and DVD/home video markets.

The Long Tail theory addresses the above described opportunity of VOD reaching larger audiences¹⁹. In essence, the theory describes how the low distribution and storage costs of intangible digital products allow companies to sell smaller volumes of diverse products to a higher number of target groups. In theory, VOD thereby leads to leveling the playing field in the film industry by making available a larger variety of EU films over a longer period of time, which in turn will trigger greater demand in film. The long tail puts an end to the tyranny of reduced “shelf space” (at traditional distribution level) that plays against the interests of European cinema when confronted with the marketing muscles of Hollywood players.

Little research has so far been conducted on the potential of VOD with regards to promoting European film. Research in the UK recently showed that films that performed poorly in cinema and retail DVD markets increase their revenue share in a digital environment – thereby proving that VOD can be an opportunity to unlock the international potential of the European film industry²⁰. In addition, the European Audiovisual Observatory commissioned a study examining existing VOD services and business models across Europe²¹. However, a detailed assessment of the economic and cultural potential of VOD in relation to European film at EU level is still missing. A rapid screening of VOD offers supported by MEDIA show that we are a long way off in availability of European titles on national VOD platforms.

2.2 The Current Market Environment

The above described momentum regarding digital distribution and consumption of audiovisual content is influenced by a number of developments. Data concerning broadband roll-out in Europe as well as the latest developments of online entertainment activity reflect the gradual shift from analogue to digital media consumption. According to market statistics, EU internet take-up was close to reaching a 50% threshold in 2007²². In this context, the availability of broadband is a major factor influencing digital distribution of film. It ranges from levels below 15% (e.g. Ireland, Greece, Bulgaria, etc) to levels above 60% (e.g. the Netherlands, Denmark).

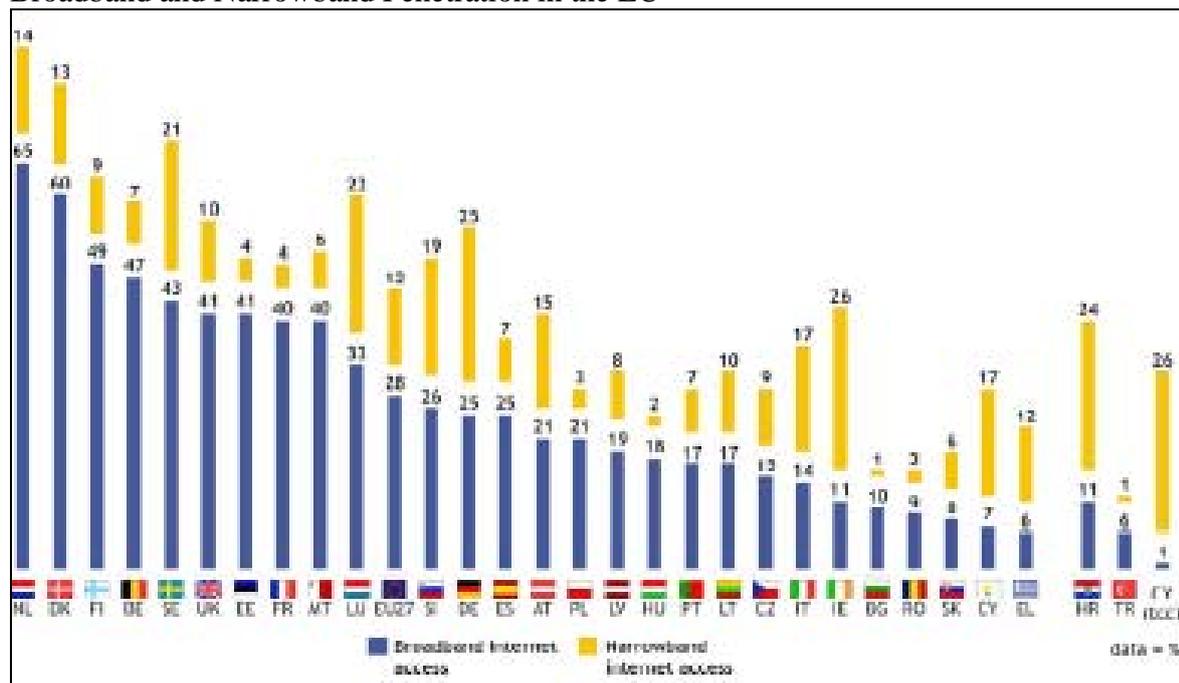
¹⁹ See, for example, Wikipedia article on this concept of Chris Anderson: http://en.wikipedia.org/wiki/The_Long_Tail (accessed: March 2008).

²⁰ Feasibility Study for a Digital Platform for the Delivery of Independent UK Films to the Home, UK Film Council Study, 2006, pp. 10 – 18.

²¹ See [Summary of the Study on the development of video-on-demand \(VOD\) in 24 European countries](#) (accessed in March 2008).

²² See <http://www.internetworldstats.com>, accessed March 2008.

Broadband and Narrowband Penetration in the EU



Source: Eurobarometer E-Communications Household Survey, 2007

As television and cinema audiences increasingly move online for their share of entertainment, the popularity of social networking websites, online-communities as well as portals for user generated content grows. For example, with their 100 millionth account created in August 2006, MySpace – a social networking site - attracts new registrations at a rate of 230,000 per day. Media consumption and distribution are therefore steadily moving towards digital.

Apple's announcement in January 2008 of its Internet-based VOD service in the United States, which is expected to be followed by the company launching a similar service for European territories, is an indicator for the current trend to establish internet based legitimate VOD services²³. Recent moves by industry players such as Warner Bros in the UK, which just shifted to launching some films on the same date on both DVD and VOD, illustrates growing consumer demand online and the industry's willingness to enter this market.

Of course, the setup of legitimate VOD services to some extent also illustrates the film industry's desire to curb illegal downloading and streaming which is offered by a range of online services and continues to be a significant threat for the industry. A recent study commissioned by the French Centre National de la Cinématographie estimated that 94% of all films were available for illegal download or streaming before they reached DVD and VHS rental and retail markets²⁴. In fact, most online consumption of film is illegal and therefore the real market potential of VOD is difficult to estimate. Yet, film stakeholders increasingly understand that standing by is not an option and that as long as there are no legitimate and easy to use VOD offers available online piracy will continue to exist and thrive.

Some of the most popular international portals include Hulu, YouTube, Google Video and Apple iTunes. Many of them operate in a grey area when it comes to offering IPR protected content on their sites and one may question whether these portals offer real VOD services.

²³ See Apple press release, www.apple.com/pr/library/2008/01/15itunes.html, accessed in March 2008.

²⁴ See CNC Website: <http://www.cnc.fr/Site/Template/Accueil.aspx?SELECTID=614&id=1&t=1>, accessed March 2008.

However, due to their great popularity, these brands will nevertheless position themselves to gain a share of the emerging legitimate VOD market. What is interesting about many of these new platforms is that they are often not run by traditional entertainment companies. Increasingly, the film industry therefore has yet another stakeholder on the negotiating table concerning their rights. In this context, it is essential to ensure that European films are present on the future global platforms.

Until recently, VOD portals in Europe have primarily been set up by telecom companies and the broadcasting sector. Examples include services from Orange (FR) Belgacom (BE), Canal Plus (FR), BT (UK), Telefonica (ES), Telecom Italia (IT) and several others. However, the European film industry is also increasingly catching on to the VOD trend. The French portal Universcine as well as Spain's Filmotech or SF anytime from Sweden are some examples for film industry-run VOD initiatives. UK-based Screenonline, Norwegian filmarchivet and the INA portal in France are examples of services that have been established with a public interest objective. It should be noted that many of Europe's existing VOD portals are so far not breaking even. The quest to operate a profitable VOD service remains a difficult one - largely due to piracy, the difficulty to securing blockbuster licensing rights (to attract the audience) and the related limited demand.

2.2.1 Review of Video on Demand Services in Europe

A recent European Audiovisual Observatory commissioned study provides insights into the distribution of VOD services across EU Member States²⁵.

Towards the end of 2007, 258 existing VOD services could be identified in the EU, out of which 191 were Internet-based services, 67 Internet Protocol Television Services (IPTV), 26 cable services, eight satellite services and one digital terrestrial service²⁶. This constitutes almost twice as much as in 2006, reflecting the trend that broadcasters increasingly provide some of their programmes as "catch-up" services online after their initial transmission. The study also identifies three dominant business models for VOD:

- Rental – Users pay to stream or download each title separately or subscribe to access a defined number of titles over a certain period of time.
- Purchase – Users pay to download and own the title for indefinite viewing
- VOD Free of Charge – These services are mostly provided by broadcasters to show their programmes Online for a limited time after initial transmission.

2.2.2 Availability by Country

The proliferation of VOD services differs across Europe, with more services being available in larger countries than in smaller ones. However, broadband take-up as well as the number of television channels in each country also seem to influence VOD roll out. France and the Netherlands are leading in a country-by-country comparison. Both provide more than 25 Internet-based VOD services. Spain (12), Sweden, the UK and Norway (all 11%) follow suit. Estonia (2), Luxembourg (2%) Slovenia (2%), Poland (2%), Turkey (1%) and Cyprus (0%) make up the bottom.

²⁵ See summary of the Study on the development of video-on-demand (VOD) in 24 European countries (accessed in March 2008).

²⁶ Note that the total number of VOD services does not include duplications of services available over multiple transmission networks. The individual services, however, do.

2.2.3 Operators of VOD Services

VOD services in Europe are run by various operators from different industries including telecom companies/ ISPs, broadcasters, aggregators, cable operators, retailers, DVD Services, archives, producers, authors rights and neighboring rights management agencies, a film group and a video publisher. However, the bulk of services are provided by the first three of these groups. The emergence of telecoms moving into the entertainment market in order to compensate from their diminishing fixed-line business is especially likely to have a lasting impact on the industry. These operators with increasing film distribution interests will have to take an active role in financing audiovisual production and in fighting piracy.

2.2.4 Fragmentation of the Market

The vast majority of commercial European Internet-based VOD services primarily serve national markets or focus on one territorial region of the EU. For example, Canal Play, a French service offering approximately 1300 titles, only provides its main website in the French language. SF-Anytime, a large Swedish service owned by the Bonnier Group, is only available in Scandinavia and blocked for access from foreign territories. The emerging European VOD scene therefore seems to reflect the market fragmentation of the traditional audiovisual industry along national, linguistic and cultural boundaries but also rights licensing practices. As is the case for cinema (and, in fact, many creative industries), this fragmentation is the result of a number of market dynamics, business strategies, licensing practices and national policies.

2.3 VOD Challenges Faced by the European Film Sector

During a speech delivered at the European Parliament in November 2007, leading Spanish film producer Enrique Cerezo introduced several challenges that the European film industry faces on its way to benefit from VOD:

“Digital distribution is profoundly affecting business models and the way in which investment is recovered and profits obtained from films. We know well what has happened in the music industry and we don’t want the same to occur in the film world. This challenge gives us an opportunity to increase international circulation of films. However, are we ready to get the most out of this opportunity? Are we prepared to radically rethink the way we do business? Can we influence market developments to our benefit, or do we have to follow the business model imposed by companies such as Google and Apple? What can we do to ensure that European films are to be found on secure digital distribution platforms or digital film screens, the market of tomorrow?”²⁷

2.3.1 Finding a New Business Model for VOD

The above quote sums up the challenges European film companies and policy makers face with regards to VOD. In order to benefit from VOD the European film industry has to develop new business models that allow film companies to access new markets and to engage with consumers via legitimate online services. Indeed, the availability of innovative services is one of the key issues with regards to curbing piracy, which continues to damage the industry in unprecedented ways. However, as long as film production continues to be financed according to

²⁷ Enrique Cerezo, Speech delivered at European Parliament event “New Potential, new opportunities: The way forward for the European film industry, 7th November 2007.

traditional practices (both by public funds and private stakeholders) and if release practices continue to function based on requirements of the offline world, the film industry will find it difficult to develop progressive approaches to exploiting its content online. With regards to VOD, the real challenge for European film companies is to establish themselves in the online distribution market at a time where little revenue can be made and very few investors are interested in funding the sector. However, film companies are today faced with negotiating revenue splits (subscription, advertising, pay per view or pay per download) and terms of exploitation. It is important for them to negotiate good deals as VOD will determine a major source of revenue in the future.

2.3.2 Financial Challenges

Traditionally, a broadcaster or a distributor would pay a minimum guarantee against rights to broadcast or distribute a film. If the producer retains VOD rights in order to exploit them individually these players may be more reluctant to invest in the budget of a film. On the other hand, if the producer sells or licenses the VOD right to broadcasters or distributors their business interest will make them reluctant to exploit the VOD rights as VOD competes with their existing business. One key issue is thus who is going to cover the funding gap that occurs if producers decide to hold on to their VOD rights. As will be further outlined in the final section, in Denmark, 30 film producers have decided to retain the VOD rights on their film to negotiate separate licensing terms with VOD operators. They have succeeded in convincing the traditional funding sources of films (distributors, broadcasters) that this was the best way to extract more value from VOD.

Another issue is to prevent negotiations of contractual precedent which limits the VOD revenue share of production companies. Telecom and broadcasters are in a better position to negotiate a split that will not allow producers to obtain a proper reward for rights exploitation. It seems here again that a collective approach as adopted in Spain with EGEDA or in Denmark with the VOD company has permitted local film producers to negotiate better revenue splits with platform operators. Again, both cases of good practice will be highlighted in the final section of this study.

In order to benefit from VOD, European film companies require the resources necessary to act independently and to be in a position to retain VOD rights to maximize their commercial value.

Private investors are reluctant to invest in cinema if the returns become even less predictable at a time when piracy limits the industry's revenues and when the continued fragmentation of the market promises fewer large-scale returns. This, of course, is accentuated by the general structure of the industry, which is characterised by a myriad of SMEs with no distribution infrastructure, that produce one – two films per year and lack the capital required to cover increasing marketing costs.

Broadcasters and telecom operators may be interested in acquiring online rights for their own services which will primarily serve national markets. They will therefore not be interested in financing film companies that seek to access international platforms of competitors or to independently reach consumers abroad. Finally, national and regional public funds are at present also not prepared to commit the resources required to finance innovative business models by fear to unbalance the system against the interest of some stakeholders in the distribution value chain. Their support sometimes remains entangled with theatrical distribution rather than to connect to new means of distribution such as VOD.

As will be further examined, one way forward for right holders may be to pool their resources in order to close more preferential VOD licensing deals.

2.3.3 The Challenges of Release Windows

The current practice of distributing content according to established release windows in the audiovisual sector is another obstacle to the development of VOD. In some Member States, media regulations and/or public funding practice do not show sufficient flexibility in addressing release windows and do not take into account the prospects of the emerging digital film market. A rigid system of release windows is not adapted to the online world. Some films may have an interest in being made available rapidly on VOD to maximise revenue.

Media release windows create a hierarchy between different release formats in the distribution chain (e.g. theatrical exhibition, DVD release, free-to-air broadcasting, etc.). In the analogue media environment, such practice helped to save costs as, for example, each additional film print that would have been needed if a film was released simultaneously translated into additional expenditure. Today, as digital technology allows film companies to reproduce and transmit content at much lower costs and piracy threatens slow step-by-step release practices, this release model often seems outdated. Indeed, from a VOD provider perspective, sticking to release windows reduces the profit-making potential of VOD.

Some market players, such as pay-TV operators, profit from the release window system. Granting VOD services an equally or even more advantageous window than a pay-TV broadcaster (which often acts as a funding source for the film industry – such as Canal + in France) would jeopardise the profits of the pay-TV industry as their offer would be less exclusive. Similarly, a VOD provider benefits from releasing films online at an early stage as it can charge higher amounts for the films on offer – the closer to the DVD release date the better. The fact that an early VOD release is by many considered as a way to tackle the challenge of piracy adds another dimension to this issue.

It is therefore essential to find a fair balance between the different stakeholders. Such balance can be negotiated on the basis inter-professional agreements which will safeguard the interests of pay-TV whilst enabling VOD services to flourish. In France, on 23rd November 2007, an inter-professional agreement between different industry stakeholders aligned the VOD window with the DVD window 6 months after theatrical release²⁸ (This agreement will also be further reviewed in the policy section). The earlier mentioned Warner Bros. shift to release films on the same day on DVD and VOD also illustrates the trend towards slowly reducing the importance of release windows. Already in 2006 Warner Bros. released the new sequel "Harry Potter and the Goblet of Fire" for download-to-own the same day the DVD went on sale in the Netherlands and the Dutch-speaking part of Belgium²⁹.

The general trend across Europe to deal with this issue is that right holders negotiate the chronology of release windows and that the latter is decided on a contractual basis. Regulations at international and EU level support this approach, namely the European Convention on Transfrontier Television³⁰ of the Council of Europe and the Television Without Frontier Directive (amended by the Audiovisual New Media Services Directive). The latter compels

²⁸ See Memorandum of Understanding of the 23rd November 2007.

²⁹ See press release on <http://www.businesswire.com/portal/site> (accessed April 2008).

³⁰ European Convention on Transfrontier Television, <http://conventions.coe.int/Treaty/EN/Treaties/Html/132.htm>, (accessed April 2008).

Member States to “ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rights holders” (article 3d AVMSD).

In the majority of EU Member States’ regulations are in line with these provisions. However, some countries continue to apply provisions with regards to the chronology of release windows and thereby have the potential to slow down the development of VOD – namely France, Germany, Austria and Portugal. Moreover, public film support in some Member States and some European regions is only granted provided that the film is first theatrically released. Germany³¹ and Austria³² are examples for this. While such funding requirements were to some extent created to preserve film theatres as cultural institutions the fact that they could hamper VOD rollout was not an issue at the time.

Despite some same date releases online and in theatres most films continue to be released according to established release windows and exhibitors naturally support this practice to protect their business. This development is important as consumers will continue to be tempted to illegally download in order to by-pass release windows which benefit established business models but do not suit consumers. In this context, the film industry should accept that online distribution puts consumers into control. The music industry is still paying the price for taking the time to recognise the reality of this new market place and to adapt its business practices.

Few investors today would be keen on filling the finance gap that theatrical distributors left if film producers were free to negotiate their own release strategies. However, film companies interested in VOD feel that the funding practice of making theatrical release obligatory is more and more outdated in a digital environment. Film companies should be encouraged to experiment with new methods of distribution and finance.

2.3.4 Technology Challenges

Digital technology is changing every aspect of the entertainment business and continues to create uncertainties for the film industry. The impact of piracy on traditional business models and the technological measures that can be taken to ensure rights management and fair remuneration online are some of these.

Indeed piracy remains the key concern for the film industry at global level. According to the MPAA representing Hollywood in 2005 the worldwide film industry including foreign and domestic producers, distributors, theaters, video stores and pay-per view providers lost \$18.2 billion to piracy. China’s local film industry lost \$2.7 billion to piracy in 2005. France lost \$1.5 billion and Mexico lost \$1.1 billion (both online and offline). In 2005, MPAA studios lost \$2.3 billion worldwide to Internet piracy alone.³³

On a different level, the film industry lacks the technological expertise and the resources to adapt to the new digital environment and misses the opportunity to influence the development of VOD technologies at a crucial point in time. Yet, experience from the music industry tells us what can happen to an industry if it does not consider the impacts of technological change at an early point in time and with a proactive attitude.

³¹ Article 30 *Filmförderungsgesetz* (law on state aids for cinema).

³² Article 11a *Filmförderungsgesetz* (law on state aids for cinema).

³³ See MPAA Online - http://www.mpa.org/piracy_Economies.asp (accessed April 2008).

2.3.5 Lack of Expertise and Influence Regarding Technological Developments

European film companies often lack the resources and expertise in order to proactively influence the current developments of and policy debates concerning online distribution. Most film companies focus on finding funds for their film projects. Few can participate in high level discussions pertaining to technological standards or industry practices such. This is highly unfortunate as there are a number of technology related issues that require further input from the creative content sector (this is also addressed in the section on DRM).

There is still time for influencing how digital technology will shape the creative content sector in the medium to long term and the European film industry should not be under-represented in this process. One example for such under-representation of the sector is the limited presence of European content production companies and creative SMEs at round table discussions of the currently established Platform on Content Online³⁴. However, if decisions pertaining to standardisation or new business models in digital distribution are left to broadcasters, Hollywood and the ICT industries, the European film industry cannot influence future VOD developments. It should thus be ensured that European film companies participate in policy debates that influence VOD.

As highlighted in a section on FP7 which is included in the appendices such under-representation of the European film industry is also apparent in the little role it plays in current ICT related research and innovation initiatives by DG Information Society and Media. FP7's ICT research has been allocated €9,1 billion over the same period of time that the MEDIA programme has been allocated €755 million. However, FP7 research activities that relate to creative content markets, such as priority Digital Libraries and Content as well as priority Networked Electronic Media, are geared towards the interests of telecoms and consumer electronics manufacturers. For example, research pertaining to new business models for online distribution and questions on how creative content production can be rewarded in ubiquitous and distributed networks receive little attention by FP7.

This apparent disconnectedness between FP7 and the interests of the European film industry is unfortunate and disregards the fact that the availability of attractive and original films and other creative content is a key driver of technology uptake. To some extent, the Commission's progressive notion of the connectedness of ICT and content industries which led to the creation of DG Information Society and Media seems to have not translated in further integration of ICT research and innovation support and support for the European audiovisual industry. However, unless the film sector is able to understand, master and make best use of digital technologies, the opportunities brought about by VOD will remain unexploited. In the long run, this will not only hamper the film industry but also Europe's ICT sectors.

Finally, European film professionals often simply lack the technology expertise required to estimate the real potential of VOD as well as to develop strategies to exploit online distribution. Resources required to digitise films, establish different online distribution formats and the required technological infrastructure are difficult to estimate for film professionals. On the one

³⁴ List of participants at recent meeting of the Content Online Platform: Bonnier Group (International Media Group); Football Association Premier League Limited; Impresa (Publisher); UFC – Que Choisir (French Consumer Association); Orange France Telecom Group, Sony BMG Music, Philips, Warner Bros; Vivendi; Amazon; Telefónica; Istituzionali Altroconsumo (Italian Consumer Association); VTM (Flemish TV association); Nokia; Ingenious Media (Advisory group Media and Entertainment Investment); EGEDA (Audiovisual Producers' Rights Management Association); Apple Film Production; BBC; Google Video and Babelgum (Internet TV Network).

hand, this is a challenge with regards to establishing their own VOD endeavors. As importantly, the lack of expertise puts them in a difficult position when negotiating terms with VOD operators. To solve this challenge, further technological and business training for producers with regards to the dynamics and workings of VOD is required.

2.3.6 Digital Rights Management

DRM has long been discussed as the savior of the content industries in the context of piracy and the emergence of new business models. However, it increasingly becomes clear that DRM can only be part of a solution that will promote creativity and innovation in Europe's online market for film.

The scope of this assignment does not allow for a detailed outline of the challenges the European film sector faces through piracy. It remains sufficient to highlight that the Internet and digital technology have spurred a significant amount of illegal downloading and streaming and that revenue decline for a large amount of film companies has been the consequence of this. DRMs help content providers to protect and manage the usage rights of digital content such as films. Today, all commercial VOD services apply DRMs which are also important tools to monetise VOD activities as they can facilitate efficient economic transactions between content providers and content users.

However, DRMs have so far not managed to tackle piracy – neither with regards to film, nor with regards to music. This is not necessarily linked to DRMs readiness. According to industry stakeholders most DRM systems today offer enough robustness and security. However, illegal opportunities to download content will to a certain degree remain and content users are to some extent simply more tempted to gain free but illegal access to IPR protected works rather than having to pay for them. On a different level, some users that might be willing to pay for creative content feel restricted by the limits that DRM imposes on the use of content. Some therefore suggest that an over-restrictive application of DRMs has the potential to push potentially legitimate users to continue downloading of films illegally. In this context, content providers have to find a delicate balance between using DRMs and testing out new business models and remuneration mechanisms.

Another important challenge for DRM is interoperability, the ability for different devices and services to interact with each other and exchange data seamlessly. In fact, lack of interoperability is considered by many to be the true impediment to the future application of DRM. The implementation of interoperability across various platforms would help to increase customer choice as well as increase the willingness of consumers to adopt legitimate services.

As suggested in the previous section on relevant regulations there is certainly a role for the European Commission to mediate between different stakeholders interested in the further development of DRMs and their application. By ensuring that the European film industry and right holders are included in these discussions a balanced approach to DRM, which acknowledges that it is part of the solution but not the single solution to unlocking online distribution markets for film can be best established.

In this context, protection of consumers' data and privacy must be ensured. According to the principle of proportionality, a balance needs to be stricken between IPR protection and the

safeguarding of data privacy. In the *Promusicae v. Telefonica* decision³⁵, the European Court of Justice dismissed *Promusicae*'s claim to impose an obligation on *Telefonica* to display personal data of their subscribers in the course of civil proceedings against them. However, the court also reminded that a balance should be found between those two fundamental rights - IPR and privacy. This balance has yet to be found.

2.3.7 Fragmentation of Rights and pan-European Licensing

The fragmentation of the European film industry as well the novelty of dealing with VOD rights presents the film industry with legal and regulatory challenges. The industry's fragmentation along national, cultural and linguistic borders is a defining feature of the industry and influences film licensing regimes across the EU. Despite a high level of co-productions, films are usually made for a local audience and have the largest reception in their country of origin. European distribution companies also mainly exist on a national basis and buy rights for national markets. Vertical integration between production and distribution on international level is a feature of Hollywood majors and does not characterize the European film industry. The film industry's challenge to facilitate pan-European licensing is partly based on this situation and it is important to take it into account when thinking about new approaches.

Because market conditions differ from one country to another, licensing so far functions on a territory-by-territory basis, which represents a constraint to the availability of European films on international VOD platforms. However territory-by-territory licensing is so far the most practical solution to reward film companies and right holders for films that are primarily consumed in national markets. It is, moreover, most likely to continue in the online world.

- Film producers are financially dependant on their most important buyers in order to finance their films.
- Theatrical distributors and large broadcasters constitute this group. However, they primarily operate at national level. Presales to distributors and broadcasters on a territorial basis reflect this economy.
- Moreover, even new VOD licensees will most likely also do so on a territory-by-territory basis. Therefore, producers have to split international rights.

This complex situation makes it difficult for international VOD operators to gain licenses for European films and puts European right holders in a weak position when individually trying to access international VOD markets: a pan-European operator has to acquire rights for EU films from individual companies in each Member State. So far, commercial operators have deemed such an approach unfeasible as it is too costly. Most likely, established international digital film platforms, which are already run by Apple (iTunes), Microsoft (Xbox Live Marketplace), Google and other international players, will not trouble themselves with getting access to European catalogues, considering the complex process of gathering individual licenses. This may have the effect of marginalising European films to national markets. As a consequence, European films will not be able to reach new international audiences and the cross-boarder distribution opportunity that VOD offers could be lost.

The European Commission has rightly identified this issue as crucial when promoting a wider circulation of European films and better access to European films by consumers. It is consulting stakeholders on the best way to address multi-territory licensing and is commissioning a study

³⁵ C-275/06 - Tuesday 5 February 2008.

on this topic that will be made available in the course of 2009.

2.3.8 Legal Uncertainty Regarding the Definition of Video on Demand Rights

The lack of a clear definition regarding what is covered by VOD rights is a further impediment to the development of VOD. What is understood by “Video on Demand” by technicians, business managers or lawyers does not necessarily cover the same notion. As VOD is not clearly defined, neither in international treaties, at EU level nor in most national legislation, this entails legal uncertainties, especially in license agreements. Legal certainty pertaining to their online rights is hence important to film companies as it enables them to monetise their rights in the future VOD market. Consultations showed that VOD licensing today still occurs in a grey area.

It is therefore essential to have a common understanding of what a VOD right constitutes, how such rights are cleared and how they fit within the current release window systems. This is done at national level in some Member States, but some stakeholders believe that there are many uncertainties regarding the status of VOD rights in several Member States. It is not clear what is covered by ‘VOD services’, for example broadcasters claim that catch-up TV falls within broadcasting rights as it is an extended version of the broadcasting right. However, the CNC recognised that it was a on-demand service. Consistency in a definition at EU level or guidelines for Member States to implement a definition would contribute to solve this issue and bring clarity on which right is ceased by rightsholders when they enter a contract with a broadcaster, for example. Yet, the authors of this study believe that since the Copyright Directive ensures the making available of the right remains within the remit of the right holder, it is enough to resolve existing uncertainties³⁶.

2.4 The Need for a New Mindset

The combination of issues examined above proves to be a real challenge for film companies and right holders with regards to exploiting the opportunities that VOD offers to them:

- As a result of a fragmented rights environment already small European film companies suffer from limited market access when it comes to selling their rights to international platforms.
- Piracy continues to challenge the film industry in unprecedented ways and the business community as well as policy makers have so far not found a common strategy to deal with this challenge.
- In order to unleash Europe’s VOD potential new business models that allow producers to exploit their rights online are needed. However, these new business models threaten the economy of traditional cinema finance and funding.

The sector is in danger to stagnate as it lacks the audience demand on the one side as well as the financial investments to test new business models on the other side. To overcome this, European film companies have to decisively embrace new business models and turn towards VOD – even if it involves some risks. They should accept that consumers are exercising more control and thus engage directly with them without relying on intermediaries. This implies:

³⁶ Article 3 (2) (c), Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

- Inviting new players at the negotiation table and being open to new ways of doing business
- Developing a better understanding of how technology changes the way the film business works
- Experimenting with new business practices that bring the product closer to the consumer (e.g. by means of new marketing and the use of social networks)
- Acting collectively to ease the licensing process in particular for smaller companies but also to reinforce their collective bargaining position

The fragmented structure of the European film industry with its mass of creative SMEs may enable it to adapt more quickly and in more flexible and innovative ways than the Hollywood majors. (similarly, the independent music sector has been more successful to adapt to the realities of the digital market place than major labels). Moreover, the fact that content drives technological developments and that users, telecoms as well as ICT manufacturers continue to be hungry for creative content is a good sign. The challenge for the film industry is not that it is not needed but that it needs to find ways to be rewarded for its creativity. In this context, European film companies should continue to consider international markets and the possibilities to exploit these through digital technology as an opportunity.

2.5 EU Regulations, Policies and Support for Video on Demand

European films are granted a special regime in the implementation of EU rules. This is mostly due to the fact that cinema and film play an important role in fostering Europe's cultural diversity and thereby support cultural identity across Europe. Both are responsibilities of the European Union, enshrined in article 151(2) of the EU Treaty which provides that the EU can support and supplement Member States' actions in the "artistic and literary creation, including the audiovisual sector". EU policies and support programmes for film reflect this ambition. Cinema is the only cultural industry that benefits from dedicated financial support and receives special attention from an assigned EC commissioner, Ms Reding. Other cultural industries such as music or books do not benefit from similar privileges. This illustrates the great public interest of cinema in the EU. We first review the legal environment in the EU that impacts on VOD development and then examine the contribution of the MEDIA Programme.

2.5.1 Internal Market and Competition Law Rules

First and foremost, the film sector benefits from a preferential regime when it comes to the implementation of EC rules to promote the establishment of an internal market and competition between enterprises. The Television Without Frontiers Directive (TWF Directive), established on the principle of "country of origin", aims at facilitating the development of an internal market in broadcasting and related activities by removing obstacles to the freedom of movement of broadcasting services. At the same time, it promotes market access for European audiovisual producers by mandating TV networks to broadcast a minimum amount of EU works. The Audiovisual Media Services Directive (AVMS Directive) extends the application of this principle to audiovisual online services and therefore reaches out to the VOD sector. The related concept of "cultural exception" helps to enable European film production to exist at a time when dominant Hollywood players control approximately 70% of international distribution. In this context, the notion that culture should receive additional attention by policy makers enables many Member States to impose strict investment obligations on broadcasters

(primarily public service broadcasters).

Secondly, the European film industry is a largely subsidised industry which benefits from a derogatory regime from EC State aid principles because of the cultural nature of audiovisual production³⁷. The 2001 Communication on the future of cinema and the audiovisual industry in Europe³⁸ grants the film sector an exemption conditioned to the respect of the general legality principle as well as additional criteria³⁹. The *Cinema Communication* is based on the cultural derogation of article 87 (3)(d).

Public funds for film must therefore illustrate their cultural purpose in order to be compatible with the Communication. The text makes a distinction between “low budget and difficult films” and those that have commercial objectives. This to some degree discriminates films that contribute to a sustainable industry. It is also difficult to determine what constitutes a cultural film as opposed to a commercial film.

The Commission launched a study in August 2006, with definite results it will be published in June 2008, on the economic and cultural impact of state aid territorialisation clauses⁴⁰. Such clauses make national state aid conditional to local spending, thus discouraging producers to shop around Europe to reduce their production costs. The film sector argues that restraining territorialisation clauses would discourage public authorities to set up schemes supporting the sector as public money would no longer promote local cinema.

On a different level, State Aid rules have an indirect but rather important influence on the development of VOD in Europe as state aid conditions the availability of films for distribution, including digital delivery. So far, few public support schemes focus on helping the film industry in its transition to the digital age. A good example is the UK Film Council’s Digital Cinema Scheme, a scheme to support the exhibitors in digital projection equipments. The scheme was cleared by the EC.

The European Commission’s last extension of the Cinema Communication to 2012, announced on the 19th May 2008 by both Commissioners Kroes and Reding, is to be welcomed. It allows time to further reflect on new trends facing the sector which are not covered by the current Cinema Communication, including support for inter alia digital technology and VOD distribution.

2.5.2 Special Treatment of Film in International Trade Negotiations

The European film industry is also protected from the impact of international trade liberalisation. During recent WTO negotiations and in the context of negotiations regarding the UNESCO *Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*, the EU has defended the view that film deserves a special treatment enabling state support in the form of subsidies or protective regulations. In this context, the UNESCO

³⁷ In smaller Member States, State Aid may represent up to 50% of production costs. Under EC Competition rules, national state aid regulations are incompatible with the common market and need to be notified to seek exemption under the ‘Cultural’ exception to the application of EC competition rules (article 87 (3)(d) EC).

³⁸ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/1326&format=HTML&aged=1&language=EN&guiLanguage=en>

³⁹ Criteria:

- 1) Aid must benefit a cultural product.
- 2) Territorialisation – 80% of film budget must be spent on the member state territory.
- 3) Aid intensity 50% of budget maximum.
- 4) Aid supplements for specific film-making activities are not allowed.

⁴⁰ Study on the Economic and Cultural impact, notably on co-productions, of territorialisation clauses of State Aid schemes for Films and Audio-visual Productions.

convention, ratified by the European Union, is an important step to safeguarding the European film sector as it enables Member States to subsidise and protect their cultural heritage independently of international trade commitments.

Protection is justified on both cultural and social grounds. One practical example that illustrates the importance of the convention are the Protocols on Cultural Cooperation dealt with in the course of Free Trade Agreements negotiations, such as the CARIFORUM protocol and the one with South-Korea, currently under negotiations. Those protocols implement the UNESCO convention and aim to provide reciprocal access to partners' quotas⁴¹.

In the context of the Doha round, the issue of liberalisation of audiovisual services has not been raised yet. The United States, which has not ratified the UNESCO convention, will want to ensure that VOD services are not prevented from traveling across continents. It remains to be seen, however, whether the European Commission will consider that the distinction between cultural and commercial cinema, applied in relation to state aid implementation, should be extended to decide on which terms liberalisation should take place.

In this context it should be highlighted that the market share of European cinema in the US (the largest market in the world) is on average less than 5% whilst the US market share in Europe was 62.7% in 2007⁴². US protectionism is not regulatory but structural (little appetite for foreign productions). Therefore trade liberalisation is unlikely to make the US market more accessible for European productions.

2.5.3 Intellectual Property Rights - High Standards of Protection with Enforcement Problem

The film industry enjoys a favourable regime to protect intellectual property both at international (WIPO) and European level (EC directives and national legislation). Film producers only enjoy a 50 year term of protection compared to their US competitors that benefit from a 95 year term; this might be something considered for review under the Term of Protection Directive as announced by DG Internal Market earlier this year. Authors and neighbouring rights are the only assets of film companies and creators. Trading those rights is the primary mechanism to accrue an income for the investment of creative efforts being made. Those rights are key elements to stimulate investment in cultural productions.

However rights exploitation is subject to major difficulties in relation to VOD:

- The availability of unlicensed content on peer-to-peer networks enabling users to access films for free.
- The difficulty to enforce rights in the online environment as some jurisdictions are hesitant to provide protection when the latter risks impinging on privacy law⁴³.

⁴¹ Expect for CARIFORUM which benefit from a unilateral preferential access to EU quotas.

⁴² Focus 2008, World Film Market Trends, publication European Audiovisual Observatory.

⁴³ In the decision *Promusicae v. Telefonica* (C-275/06 Tuesday 5 February 2008), the European Court of Justice clearly states that it lies within the responsibility of Member States to provide in their legislation for means to fight effectively against piracy. The court clarifies that the existing EU directives do not prevent Member States to lay down in national legislations an obligation to disclose personal data in the context of civil proceedings provided the principle of proportionality is respected between different fundamental rights such as the right of intellectual property and the right or privacy. It held that European law does not impose on ISPs to disclose their subscribers' identities to trade organisations for the purpose of civil litigation against them. However, it also says that European law also does not prevent member states from imposing such requirements if the legislation sufficiently balances IP and privacy rights.

- A strong academic and consumer protection movement (largely relayed within the European Parliament) that advocates for free access against intellectual property enforcement.
- Reluctance from network operators, together with rights holders, to consider a system of graduated response to discourage heavy downloaders, as operated with some success in the US.

Piracy and unlicensed downloading is a major impediment to the development of VOD. Certainly massive unauthorised downloads can be contained with the advent of an efficient legal conduit to films on the market. However, today 500 legitimate online music services still have problems competing with free illegal options. For each song legally bought online, nine are illegally downloaded. It is impossible to envisage how a business can survive on this basis. Whilst digital downloads now represent 15% of the record industry's turnover worldwide - it was only 2% in 2004 - the recording industry remains in limbo with a turnover equivalent to half of what it was 6 years ago. It is likely that the same will happen to the film industry if nothing is done to enable the industry to monetise VOD exploitation. This should be addressed if Europe does not want its cultural industries to be wiped out.

2.5.4 Towards VOD Monetisation?

Considering the relationship between broadband roll out and the well being of the cultural industries, during a film industry event at the European Parliament Spanish film producer Agustin Almodovar recently requested further collaboration between different industry stakeholders: *“ISPs and telecoms should bear some liability for what is happening on their networks. It is unjustified that the piracy of films subsidises the broadband roll out of large companies. They should pay for it.”*⁴⁴

It then seems evident that collaboration is required between network operators and right holders of films to promote the emergence of a legitimate and attractive market for online content.

The European Parliament is currently considering amendments of the “Telecoms Package” aimed at encouraging such collaboration⁴⁵. It remains to be seen what the European Commission will initiate on this front. It does not seem willing to reopen the discussion on the provision of the e-Commerce Directive (2000/31/EC) adopted in 2000, a prehistoric age in internet developments. The Directive was adopted with the aim to promote the basic legal framework for electronic commerce in the Internal Market, which provides a safe-harbor for ISPs as article 12 exempts them from third party liability regarding the information transmitted via their networks (i.e. the illegal content transmitted across their networks). The Directive also states very clearly that no systematic obligation of surveillance or monitoring should be imposed on ISPs. Article 15 of this Directive establishes that ISPs should be subject to no general obligation to actively seek facts or circumstances indicating illegal activities. Those articles clearly shield ISPs from any responsibility towards transmission of illegal content across their network. In the meantime, e-commerce has yet to deliver all its promises for cultural industries.

⁴⁴ Agustin Almodovar, Speech delivered at European Parliament event “New Potential, new opportunities: The way forward for the European film industry, 7th November 2007.

⁴⁵ The Authorisation Directive (2002/20/EC) would include in its Annex an obligation for telecoms operator and access providers to respect the *acquis communautaire* in copyright related issues. Second, article 20 of the Universal Service Directive (2002/22/EC) would impose an obligation on providers to inform their subscribers, before they sign a contract, on their rights and obligations concerning copyrights as well as the legal consequences of piracy).

In this context, current developments at national level may contribute to facilitating stronger cooperation between different industry stakeholders. In France, an inter-professional agreement – the *Memorandum of Understanding (MoU)* – addresses the issue of illegal file-sharing activities and aims at remedying the amount of illegal downloading, that currently makes the return on investment in film production impossible. This agreement was signed on 23 November 2007 by music and film producers, ISPs, telecom companies and the government. France Telecom made a point in signing the agreement as well. The text recalls the importance of compliance with national measures implementing the Copyright Directive⁴⁶ and aims at setting up a new authority with powers to suspend or cut access to the web for those who illegally file-share. The deal foresees the implementation of a “graduated response” to illegal file-sharing activities: internet users downloading illegal music or film files risk losing web access should they not answer positively to initial warnings. Similar initiatives are currently debated among policy makers at national level in the UK and Germany. It should be noted that a similar voluntary industry agreement to that of the “graduated response” is already in place in the USA.

In the context of the above challenges and in order to help develop solutions that benefit the content sector and support the take up of new technologies, the European Commission has been trying to encourage dialogue between the content industries, right holders, telecoms companies, broadcasters and other players in the ICT sector. The *European Charter for Film Online*, endorsed in Cannes of May 2006, is an example for such endeavor. It was set out to enable all stakeholders to come together in order to develop new VOD services and discuss solutions to fight against piracy.

However, two years after the endorsement observers complain that little has happened to fight illegal downloading and different industry players are still at odds on how to tackle the issue of piracy. Therefore, in its *2008 Communication on “Creative Content Online in the Single Market”*, a follow-up to the Film Online Charter, the EC encourages more proactive cooperation between the different stakeholders by organising platform meetings. The first meeting of the “EU Platform on Creative Content Online” took place on 17th April 2008 and addressed the issue of ‘new business models’. This exercise is expected to lead to an EC Recommendation in early 2009.

With the BONO report on creative industries, which importantly recognises the economic and cultural importance of the film sector in the context of the Lisbon strategy, the European Parliament recently also contributed to the debate. While the report refers to the MoU and the need to protect copyright, it also calls for the need for increased dialogue between rights holders, telecom operators and ISPs while pointing out the fact that copyright enforcement should not be to the detriment of privacy law and that “criminalising consumers who are not seeking to make a profit is not the right solution to combat digital piracy”⁴⁷.

2.5.6 The MEDIA 2007 Programme and VOD

There exist a number of EU schemes that support film or have the potential to contribute to its development in the future. The most important of these is MEDIA 2007 which aims to enhance European cultural diversity, increase the circulation of EU works and strengthen the

⁴⁶ Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

⁴⁷ Report on cultural industries, Committee on Culture and Education, (2007/2153(INI))

competitiveness of the European audiovisual sector⁴⁸. Other programmes such as FP7 and eContent plus are shortly reviewed in the appendices.

MEDIA 2007 is the cornerstone of the EU's audiovisual support policy. It combines € 755 million of funds for Europe's film industry over the years 2007 – 2013 and thus plays a significant role in promoting European cinema. The main priority of MEDIA is to support distribution related activities – 55% of the programme's funds are allocated to this domain. In this context, increasing the circulation of European works at international level is a key objective.

By doing so, MEDIA also attempts to balance the production-oriented support systems that exist at national and regional level in the EU in order to develop a more demand-led film market in Europe. However, in the context of establishing a pan-European market for non-national film the EU is struggling. Despite MEDIA's support, the box-office share of non-national films across the EU has remained relatively low. Statistics from the European Audiovisual Observatory show it at around 8% in 2000⁴⁹.

Reasons for such low circulation are multifold:

- Films that cater for a national audience on cultural grounds tend to be less competitive internationally
- The fragmentation of the European film distribution sector along national lines makes it more difficult for distributors to develop integrated pan-European business strategies.
- European film budgets usually lack the financial resources required to market a film sufficiently internationally compared to Hollywood.
- There are also few European companies that can rely on pan-European distribution networks and release strategies. The film Asterix was the latest example of a successful pan-European strategy resulting in box office revenues equivalent to that of a Hollywood production. These examples are rare in Europe.
- Finally a large amount of production subsidies at national level have the effect of filling local theatres with national productions and Hollywood films, thus leaving less space for non-national European films.

2.5.7 MEDIA's VOD Scheme

In 2007, MEDIA launched a funding call aimed at supporting VOD projects as well as projects aimed at Digital Cinema Distribution with a view to ensure that the sector took full benefits of recent technological change. A similar call will be launched in May 2008. The European commission should be congratulated for this initiative and for taking the lead in addressing the VOD challenge.

A principle objective of the call is to support the creation and exploitation of catalogues that would "be distributed digitally across borders". The Commission has set ambitious goals in terms of timing and content requirements: not more than 40% of a catalogue was allowed to derive from one country in order to promote the non-national character of the projects. Ideally at least 50% of all content should contain films and approximately 35% should be from

⁴⁸ Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007).

⁴⁹ More recent figures could not be obtained from the EAO website. See:
http://www.obs.coe.int/online_publication/reports/forum2001_report.html

Member States with low production output. Moreover, each project was to launch a functioning VOD portal by 1st May 2008. However, content quotas and language requirements have to be fulfilled by 31st December 2008. Furthermore, the call for proposals geared funding towards film industry stakeholders that were not majority-owned by broadcasters or telecommunications companies to favour cinema industry initiatives.

As a result, the Commission received approximately 35 project proposals for the VOD strand of the call. Following the project assessment, 5 projects were granted €3.4 million (contribution higher than €300.000 per project): FIDD (DA), Europe's finest (DE), Moviepilot Europe (DE), Filmklik (HU) and Universciné (FR). € 1.2 million was granted to 7 projects (contribution lower than 300.000 euro per project): Docs Online (NL), Treasures from the European Archives (FR), Medici-arts.tv (FR), Filmladen Arthouse & Service Portal (AT), MK2VOD.com (FR), Homescreen TV (NL) and NOWTILUS (DE). In this context, MEDIA's selection of eligible projects primarily benefited endeavors from France, Germany and the Netherlands. No project proposals from Southern Europe were selected.

In contrast to the VOD strand, little interest from the industry was shown regarding the subject of the Digital Cinema Distribution strand. No money was allocated, thus leading one to wonder why the EC proposed such a scheme in the first place.

As most projects are still in development it is too early to evaluate whether MEDIA's selection and support will have a real impact on each project's ability to expand beyond their country of origin with a significant offering of non-national European film. The initial assessment will therefore be limited to commenting on the scheme's strategy.

The relatively high number of project proposals received by MEDIA for the VOD strand shows that the funding activity is a timely initiative that touches upon an issue that is important to the European film sector. In this context, it is worth noting that most proposals were submitted by producers (as opposed to distributors).

However, the total level of funding made available for VOD in 2007 (€4.6 million) is small in relation to the challenge at stake – also in the context of MEDIA's total budget devoted to supporting international distribution (on average approximately € 60 million per year). The potential requirement to increase funding for VOD is additionally accentuated by the relatively high number of projects selected (12 out of approximately 35) which on average received rather modest funding contributions (average: €383 333). Given the ambitious timescale and content requirements of the call, it remains to be seen whether all beneficiaries will be able to implement the accelerated timetable outlined by MEDIA considering the modest resources available for implementation. Developing and launching an online VOD service bears considerable costs, as has been shown by the budgets developed for the two film portals featured in the feasibility study. Both versions envisioned would be comparably modest in scope (number of titles, marketing budget, etc.) compared to a fully-fledged commercial service.

The recently published guidelines for the 2008 call for proposals, which closes on July 14th, has increased the budget to €5.9 million for both VOD as well as Digital Cinema Distribution. Yet, it is not clear how the money available will be split between the two fields of activity.

It is important to note MEDIA's VOD scheme in its current state primarily funds existing national initiatives to enable them to grow internationally. To some extent MEDIA repeats what

is done to encourage distribution of non-national films in traditional distribution. This could have the following effects:

- It could encourage the multiplication of small national platforms that will have difficulties to compete with internationally more better funded platforms, with the risk of marginalising European films to the fringe of commercial distribution (the risk of “ghettoisation”)
- It could risk duplicating setup costs (national platforms repeating the same technology mistakes or wrong investments, going through the same process to gather licenses from right holders)
- It distorts competition with other commercial initiatives

Alternatively, MEDIA could focus on supporting projects with the following aims:

- Collaboration between national platforms to share experience and exchange repertoire
- Standardisation of metadata to promote rights information exchanges across platforms
- Encouraging right holders to pull their rights catalogues to ease the licensing process to various VOD platforms

KEA believes that the main challenge for European film makers will be to ensure a presence on future commercial and international platforms that will control the bulk of VOD traffic, either at national or international level. MEDIA does not address this issue. Today, European producers have limited bargaining power in the licensing process. They should be encouraged to provide scale by pooling their catalogues and technical or business affair resources. This would enable them to negotiate with powerful international VOD platforms or local powerful platforms that want to offer non-national films. How can we ensure that European films are featured on Google or Yahoo’s video services in the future?

We feel that unless film right holders do not organise themselves on a collective basis they will not be able:

- To ease the licensing process for platforms looking for European content – thus missing an opportunity.
- To improve their bargaining position when negotiating with powerful users and thus being discriminated against in licensing deals.

MEDIA should therefore support collective approaches on the principle that with a 25% market share European film makers are as big as any of the Hollywood majors and are therefore in a position to influence market development to their benefit. The goal should be to establish an international licensing infrastructure that enables European film to access large VOD platforms and to provide a one-stop shop for international licenses.

The EU should use MEDIA funds to leverage more collaboration amongst industry professionals. KEA takes the view that unless European film professionals pool their resources they will not benefit in a substantial way on digital platforms and the opportunity to increase international distribution of European films will be lost.

3. CONCLUSIONS AND RECOMMENDATIONS

3.1 Feasibility of a Pan-European Film Portal

The first part of this study assessed the feasibility of establishing a pan-European film portal which could effectively contribute to making Europe's cinematographic legacy better known. To anticipate the real challenges for the establishment of such a service several common obstacles were identified:

- The establishment of a free pan-European VOD platform on the Internet is costly, especially if one accounts for different language versions and a robust technical infrastructure.
- VOD-rights for many films are fragmented and therefore very difficult to acquire on a multi-territory basis.
- A publicly funded VOD portal should not directly compete with commercial VOD operators.

With this in mind, a pan-European film portal with public-interest objectives was conceived. The portal would have an educational purpose as it would help to develop media and film literacy skills across the EU. It would give access to films from ideally all EU Member States, offer different language versions and showcase selected titles reflecting European cultural diversity. The portal would also host a range of additional information resources and e-learning tools.

Considering the operational setup of the project it became clear that a key condition would have to be fulfilled if the project was to be implemented: titles for the portal would have to be identified and selected in collaboration with national stakeholders to ensure that international rights clearance would be possible as well as to ensure their educational and heritage value. Indeed, strong cooperation with national film agencies and film archives and building upon existing competences in the Member States appears to be a crucial precondition for the success of the project.

In this context, the project idea was presented to the chair of the European Film Agency Directors network. Based on the chair's support the project idea was circulated among the 24 members of the EFADs and their interest and support in the project was tested. The majority of members showed great interest in the initiative and would support a pan-European VOD portal for educational purposes if it was to be implemented (15 indicated support, 5 responses are still due, 3 objected the idea on grounds of feasibility). A precondition for national stakeholders' support seems to be a certain level of EU financing, further project development and strong coordination by a project leader.

On the basis of this positive feedback two project options were developed taking into account different technological and operational choices. Based on desk research and consultations with European VOD operators, budgets for both versions were developed:

Option One: fully-fledged VOD platform offering initially at least 24 films in 23 official EU languages. Ambition to further develop and grow substantially (reflected by technological infrastructure, management and marketing costs).	
Total:	€1 737 707 (incl. 15% contingency)
Option Two: slightly smaller VOD platform offering a smaller selection of films (between 20 and 30) from most Member States representative of their film heritage in a selection of EU languages. Faster setup and less central management. Might need further investment if it would like to cooperate seamlessly with other portals.	
Total:	€899 013 (including 15% contingency)

The European Union’s interests with regards to such a project are multifold and cover several areas:

- Cultural diversity and intercultural dialogue
- Media and film literacy
- Encourage trans-national cooperation
- Promoting the development of a shared European identity

3.2 EU Regulation and Policy Relating to Video on Demand

The second part of the study outlines the potential of VOD with regards to unlocking the European film market and examines related regulations and policies at EU level. Thanks to VOD, Europe’s film companies have the chance to reach new international markets across Europe and abroad. For example, an Oscar nomination for a European film, which until today triggers little interest in the US, now has the potential to reach millions of PCs and further devices of interested users across America. Moreover, the new digital environment has the potential to enable European film companies to follow their own international distribution strategies independently of the interest of national broadcasters, cablecasters, telecom companies or ISPs. Film companies have the chance to move closer towards the end consumer and may be able to cut out the middleman. The Long Tail is the opportunity to tackle the industry’s structural problems in international distribution.

However, the European film industry is in reality still ill-prepared to fully benefit from the opportunities of VOD. The VOD challenge requires a complete reevaluation of business strategies and a new mind set to adapt to new forms of consumption. This requires not only technological and marketing understanding but also considerable efforts from film makers and regulators to consider the impact of the new economic paradigm which is characterised by:

- Uncertainty over future business models that will enable to monetise VOD exploitation
- A large amount of unpaid consumption (unauthorised peer-to-peer file sharing)
- Reduced investment on production from traditional middlemen (broadcasters and distributors at risk from VOD).

Another difficulty is to step in at a time of transition between the “old” and the new economy. This requires courage and perseverance as predominant conservative forces in the industry and amongst public bodies will not make it easy to change this mindset. Additionally, technology companies (consumer electronic companies, computer and telephone manufacturers, telecoms

and ISPs) will use their influence to lower their investment threshold in “content” production and distribution by seeking to undermine the value of creative companies’ intangible assets (authors and neighbouring rights). The latter are hungry for “content” but at the lowest possible cost.

3.2.1 Importance of Easing the Licensing Process of European Films for Digital Delivery

The European film industry has essentially to balance two complex objectives. First it has to fight piracy by preventing disruptive illegal services that challenge important notions of how creativity is rewarded in today’s information society. Secondly, European film companies need to embrace new online business models and make their films available internationally. By establishing more legitimate offers for film online the sector will take an important step in its efforts to fight piracy.

This boils down to the challenge of international licensing of European films to digital delivery platforms. In the short to medium term territory-by-territory licensing is here to stay. Because buyers serve local markets and will therefore require local licenses. The film sector is also dependent on these traditional buyers (broadcasters, theatrical distributors) as international VOD portals will take time to grow until they can step in to gap finance film production costs.

However, in order to enable European film to access international VOD platforms – a must in order to ensure European film companies benefit from digital distribution – easing licensing is a crucial challenge. International licensing has been identified as a key priority by the European Commission, as stated in its *Communication on Creative Content Online*. Yet, the idea of fostering the emergence of a multi-territory licensing regime for VOD still needs to be reviewed. It should not lead to a system of compulsory pan-European licensing as this would be against intellectual property rights principles based on territoriality and contractual freedom. As a matter of principle, film right holders should remain free to negotiate the contractual terms of the rights they license to users.

In this complex environment, we would like to highlight three very interesting initiatives that are taking place in Denmark, France and Spain and which are aimed at easing the licensing process by implementing a collective licensing approach according to different business models. By aligning their business interests, these initiatives can represent significant rights catalogues and increase their bargaining position when negotiating with national or international VOD intermediaries. Moreover, based on a shared pool of film titles they can decide to set up their own VOD portals and start to realise some of the opportunities that online distribution has to offer. This approach has been taken by collectives such as the VOD Company in Denmark, Universciné in France or Filmotech in Spain. The VOD Company gathers VOD rights of 20 film companies and negotiates on their behalf in order to negotiate more favourable licensing terms with delivery platforms. Universciné and Filmotech have been mandated by their members to provide films online to end-users in a legal and secure fashion. Filmotech also negotiates licensing contracts with telecom companies, broadcasters as well as ISPs looking for films for their own services. It is thereby also trying to obtain terms favourable to rights holders. However, these initiatives have so far not tackled the challenge to access international markets.

Nevertheless, the joint approach to exploit VOD is important. By collaborating, European film companies can take their fate in their own hands and decide for themselves how to deal with the

emergence of VOD and promote the emergence of a healthy online market that is not controlled by merely a few players reaching a dominant position in digital distribution. Acting collectively, the European film industry (with a 25% market share) is as big as any major film studio. Together, they are also in a position to negotiate better licensing terms with powerful users and to object to revenue share schemes that undermine the value of film rights.

From a European perspective, cooperation is also attractive because the possibility of creating one stop shops makes it easier to acquire a license for a buyer of audiovisual productions. European film production companies are too small and atomized to access international VOD platforms. A potential licensor is unlikely to spend time and considerable resources identifying the myriad of right holders. It is the responsibility for the latter to make the licensing process as efficient as possible. In the absence of such collective licensing processes European films will be marginalised on international VOD platforms.

3.2.2 Policy Recommendations to Foster a New Mindset

There is a genuine opportunity to turn VOD into a success story for the European film industry. However, a new mindset among industry and policy makers is required to unleash this potential. Such a mindset will enable European film companies to be innovative, seek new business opportunities and collaborate with each other in order to establish or access legitimate VOD services at national and international levels on fair terms. The notion that co-opetition – an appropriate mix between collaboration and competition – is an important strategy to succeed in digital economies is increasingly influencing EU strategies in the area of innovation and industrial policy. Taking this as an example, European film companies should pool together similarly to how European aircraft manufacturers joined forces in order to take on Boeing.

Therefore, initiatives that seek to stimulate debate among policy makers and industry concerning issues such as digital distribution should embrace the opportunity and promote the vision of an innovative and collaborative European film sector. Their ambition should be to equip European film companies with the means to act collectively in order to realise the full potential that VOD offers to them.

Policy challenges pertaining to VOD should involve European film companies – and in particular creative SMEs. They are too often excluded from high level discussion because they do not have the human and financial resources to be represented. For example, at the recent important meeting of the Platform on Content Online representation of the film industry was rather poor (list of attendees outlined in section 2.3.5). Only three film representatives were present – Warner Bros. studio, Apple production, a small independent Polish producer and EGEDA, the Spanish rights management society for film and television producers. This seems to illustrate the difficulty of the regulator to engage with SMEs of the creative content sector (which form the bulk of Europe’s audiovisual industry).

KEA believes that the following tools should be used to promote a new mindset that will support the industry’s adaptation to a new economic paradigm:

- Make VOD a priority distribution funding within MEDIA
- Increase the involvement of creative industries in the technology program.
- Ensure collaboration with ISPs to guarantee monetisation of online exploitation.
- Develop better monitoring process on market access (both linear and non-linear services).

- Direct other EU funding to support the digital shift (EIB and FP7).
- Promote investment in cultural production.

Media Funding

- MEDIA is an important instrument to foster more collaboration among European film companies. Whilst more funding for distribution should be devoted to VOD distribution, the programme should concentrate on promoting trans-national collaboration amongst platforms and reward collaborative ventures across borders.
- Indeed, so far MEDIA's VOD scheme is primarily supporting national VOD initiatives to develop internationally. Another approach would be to support catalogue exchanges between platforms, standardisation of practices (meta data exchanges to enable electronic communication), joint funding initiatives, etc. Such an approach would lead to more efficient pan-European licensing practices as rights would be cleared by national platforms for the respective territories. As importantly, it would avoid duplication of costs and prevent national platforms to repeat mistakes made by others or develop technologies that have already been implemented elsewhere. In this context, the European Parliament should monitor use made of Media funding and assess its impact on the market place.
- MEDIA should also encourage film industry initiatives aimed at facilitating the licensing process to digital delivery platforms hungry for "content".
- Finally, the European Commission should furthermore examine how it can help to up-skill European film professionals with regards to the challenges and opportunities brought about by VOD. This could be done by establishing relevant VOD training schemes through MEDIA training or by supporting best-practice sharing networks through other funding programmes such as FP7 and the CIP. The focus of these training and networking initiatives should be two-fold. On the one hand, the different business strategies that a European film company has to assess with regards to VOD should be addressed. On the other hand, hands on training should be provided with regards to the technological, operational and legal implications of VOD so as to equip film professionals with the knowledge required to operate in the market.

Include Film Industry in Technology Research and Related Initiatives

There is an opportunity to increase the involvement and input of the film industry in current policy debates pertaining to ICT developments as well as in research and innovation programmes of the European Commission. The opportunity of closer collaboration with the ICT sector has also been identified in the CULT committee's report on cultural industries in Europe (The Bono Report⁵⁰). So far, FP7 and related initiatives such as the Technology Platforms have not succeeded to attract content producers apart from broadcasters. However, as creative content and film are key drivers of ICT uptake, the involvement of such companies should be an objective of the European Commission. Similarly to how the EC funded the establishment of the Networked Electronic Media Platform to enable ICT companies to influence the design of its research and innovation programmes, it should increase its engagement with SMEs from the creative sectors.

⁵⁰ Report on Cultural Industries in Europe, (2007/2153(INI)), CULT Committee.

In the same context there is certainly potential to further integrate film stakeholders in research priorities pertaining to content markets. Closer collaboration between film stakeholders and initiatives such as the Networked Electronic Media Technology Platform and FP7 research priorities pertaining to content markets should be encouraged by the European Commission.

Ensure Collaboration to Enable Monetisation of Content Exploitation Online

The issue of how to facilitate stronger involvement of telecoms and ISPs was at stake in the run-up to the AVMS directive. It will be important to ensure that ISPs and digital delivery operators make their platforms accessible to European films on a non-discriminatory basis to enable market access and thus deliver a diverse offering. One option to further investigate might be a licensing regime for operators that fail to monitor their communication networks with regards to the circulation of pirated content. The philosophy behind such an approach would not to make peer-to-peer file sharing legal but to remunerate right holders. Such licensing regimes are now taking place in the music business. In order to combat illegal downloading efficiently the enactment of the two amendments currently discussed at the European Parliament are likely to be added in the revision of the Telecom Package. Finally, endorsing the graduated response should be seriously considered as a remedy against illegal downloading and a tool to effectively enforce IPR enforcement.

Better Monitoring of EU Regulation Regarding Market Access (both Linear and Non Linear Services)

The European Parliament should call on the European Commission to organise an independent report on the implementation of the AVMS Directive (in particular in relation to the obligation to broadcast a majority proportion of European works). The current report does not reflect the situation of European film makers which have increasing difficulties reaching the broadcast market – an important revenue outlet for the film industry. A similar independent report should take place to monitor availability of European films on other digital delivery platforms.

EU Funding to Support the Digital Shift

At European level, two schemes could help the film sector:

- The European Investment Bank has earmarked a comparably large sum (in 2003: €423 million) to be invested in audiovisual industries through the i2010 initiative. The bank should be encouraged to assess whether some of these funds could be used for the VOD endeavours of the film industry. The agreement between the European Investment Bank and the European Commission whereby the EIB committed to increase its investment in audiovisual projects as part of the Lisbon strategy should be revived. Currently the EIB investment benefits only the French film industry in relation to traditional distribution of films.
- Furthermore, the recently established Competitiveness and Innovation Programme, which will make available €3,6 billion between 2007 and 2013 to support, among other aspects, entrepreneurship and innovation of SMEs and progressive ICT developments, should be promoted within the film industry and made available to the sector. Similarly and as mentioned above, FP7's ICT research priority, and in particular Challenge 4 (content related research), should reach out to the film industry and be promoted among small and medium sized content producers.

Promote Investment in Audiovisual Production

Content quotas and investment obligations that only reach out to television broadcasters are no longer sufficient in the digital economy. In regard to on-demand delivery, the AVMS Directive suggests that Member States encourage new services to promote the production and distribution of European works through, for instance, financial contributions to content production, a minimum share of European works on VOD catalogues, and/or the promotion of European works in electronic programme guides⁵¹. However, the Directive does not apply the principle of technological neutrality in the respect that no obligations are imposed on non-linear services as opposed to linear broadcasting services. It should be noted that France Telecom has agreed to investment obligations in film.

Intellectual property rights are the best tools to stimulate investment in high risk sectors and intangible properties. The granting of a monopoly right rewards the financial risk taker and the artists. Attempt to weaken right holders' legal protection in the value chain is to be resisted if investment in cultural production is to be sustained.

⁵¹ AVMS directive recital 48.

ANNEXES

Annex 1: The Assignment

The Client Brief

On behalf of the European Parliament’s Committee on Culture and Education (“CULT Committee”) KEA European Affairs (“KEA”) has been commissioned by the Directorate General for Internal Policies of the Union – Directorate B – to conduct a study on “European Cinema Online – Past and Present” (“the Assignment”).

The study was requested to examine two connected but distinct issues: first, to assess the feasibility concerning the establishment of an Internet-based portal to promote Europe’s cinematographic legacy. In this context, consultants were to make recommendations regarding the implementation of a specific project. Second, the challenges faced by European cinema in becoming competitive in the VOD market as well as the examination of related EU-support and current policies.

Scope of the Assignment

The assignment was to be completed in a period of 16 weeks resulting in a medium-sized study of approximately 25 – 50 pages for the CULT Committee. The consultants’ methodology was primarily to be based on desk research and consultations with key stakeholders, including umbrella organisations at European level. A detailed outline of the methodology which comprised of desk research, 14 expert consultations, a survey exercise and attendance at an EC-workshop is included in the appendices.

Feasibility Study for Pan European Film Portal

As part of the feasibility study consultants were to assess and conceive a project which would make a practical contribution to making Europe’s cinematic legacy better known. The project should be mainly non-commercial (although it could be associated with commercial initiatives) and overcome language barriers. Consultants were to make a selection of titles per Member State, develop educational strategies and ideas related to promoting film-literacy and assess relevant related technical as well as operational challenges.

As explained in the market section of this study, VOD encompasses a number of different delivery mechanisms based on multiple communication networks. While the role of these different areas is highlighted in several sections of the study, its focus was to examine internet-based VOD services.

EU Support for Video on Demand and the Wider Context

In light of the recently established support scheme for VOD by the Media Programme, consultants were to examine selected projects and make recommendations on how EU policy can further help European cinema adapt to the VOD challenge in the years to come. Such an assessment was to take into account different EU policies beyond audiovisual (AV) policy.

Annex 2: Methodology

Research Period

The Assignment was launched with an extensive period of research. This exercise included a comprehensive review of public domain documents. Previously commissioned studies on Video on Demand from the EC, the European Audiovisual Observatory and national film agencies and policy documents from European Institutions and regulators were collected and reviewed. Consultations with 14 interviewees from industry as well as national and European institutions from several EU Member States, including Spain, France, Germany, Hungary, Norway, Denmark, the UK and Slovenia were conducted.

Development of Project Idea and Survey with National Film Agencies

Following the research phase and a review of previously supported VoD projects and related policies an initial project idea for a pan-European project was developed. The feasibility of the project idea was tested by means of a survey exercise with the European Film Agency Directors network (EFADs), covering 24 Member States of the European Union as well as by a technological and operational review of different options available.

Participation of MEDIA Information Day

Media 2007 presented its new call for proposals in the area of Video on Demand, which is due to be launched in May 2008, at a workshop at the Berlin film festival in February 2008. MEDIA's presentation at the workshop was attended to learn more about the support scheme. This was complemented with a phone consultation with MEDIA 2007 in April 2008. To develop a better understanding of the selected projects under the 2007 VoD call websites of beneficiary projects were reviewed and phone consultations with selected project coordinators were conducted.

Interim Meeting and Preparation of Final Report

An interim meeting with the Policy Department and the CULT secretariat to discuss the progress of the assignment and the different elements of the study was held on April 17th. Following the feasibility assessments of the initial project idea two project options were developed. A conclusions and recommendations section including a final assessment of the two options and policy recommendations were added to the study.

Annex 3: Consultation List

Serge Bromberg,	Managing Director – Lobster Films (FR)
Erlend Jonassen,	Deputy Director – Norwegian Film Institute (NO)
Peter Bogнар,	Managing Director – Filmklik (HU)
Irina Krohn,	Director – Finish Film Foundation
Jukka Liedes	Finish Ministry of Education
John Dick	European Commission (MEDIA Programme)
Ivo Vollmann,	Policy Officer – European Commision (Digital Libraries Initiative)
Roei Amit,	Head of Publishing – Institut National de l’Audiovisual (FR)
Georg Eckes	Project Director EFG – German Film Institute (DE)
Eva Orbanz	President – Interational Federation of Film Archives
Carlos Anton	Project Consultant – Filmotech/ EGEDA (ES)
Jens Arnesen	FIDD – Filmmakers’ Independent Distribution (DK)
John Woodward,	CEO – UK Filmcouncil (UK)
Richard Paterson	Head of Strategic Development – British Film Institute (UK)

Annex 4: Members of the EFADs Network Contacted for Survey

- Österreichisches Filminstitut (Austria)
- Centre du Cinéma et de l'Audiovisuel de la Communauté française (Belgium)
- Vlaams Audiovisueel Fonds (Belgium)
- National Film Centre (Bulgaria)
- Cultural Services of the Ministry of Education and Culture (Cyprus)
- Czech Film Chamber (Czech Republic)
- Danish Film Institute (Denmark)
- Estonian Film Foundation (Estonia)
- Filmförderungsanstalt (Germany)
- Greek Film Centre (Greece)
- Finnish Film Foundation (Finland)
- Centre National de la Cinématographie (France)
- National Film Office (Hungary)
- Irish Film Board (Ireland)
- Ministero per i Beni e le Attività Culturali - Direzione Generale per il Cinema (Italy)
- National Film Centre (Latvia)
- Ministry of Culture - Department for Arts (Lithuania)
- Film Fund Luxembourg (Luxembourg)
- Maltese Film Commission (Malta)
- Nederlands Fonds v.d. Film (Netherlands)
- Polish Film Institute (Poland)
- Instituto do Cinema Audiovisual e Multimedia (Portugal)
- Centrul National al Cinematografiei (Romania)
- Instituto de la Cinematografía y de las Artes Audiovisuales (Spain)
- Ministry of Culture - Department for Cinema (Slovakia)
- National Film Foundation (Slovenia)
- Swedish Film Institut (Sweden)
- UK Film Council (United Kingdom)

Annex 5: Requested Wish-List of Films per Member State To Illustrate Potential of Portal

Austria:	Barbara Albert – Nordrand
Belgium :	Luc et Jean Pierre Dardenne – Rosetta
Bulgaria:	Vylo Radev – Adaptatzia
Cyprus:	Kimon Christodoulides – Indigo
Czech Republic:	Milos Forman – The Shop On The High Street
Denmark:	Thomas Vinterberg – Festen
Estonia:	Grigori Kromanov – Viimne Reliikvia
Finland:	Aki Kaurismaki – Calamari Union
France:	François Truffaut – Les 400 Coups
Germany:	Werner Herzog – Aguirre Or The God’s Wrath
Greece:	Thódoros Angelópoulos – O Megalexandros
Hungary:	Bela Tarr – Family Nest
Ireland:	Neil Jordan – Michael Collins
Italy:	Roberto Fellini – La Strada
Latvia:	Gunars Piesis – Naves Ena
Lituania:	Justinas Lingys – Alponinas
Luxembourg:	Andy Baush – La Revanche
Malta:	Louis Cuschieri – Qerq
Netherlands:	Paul Verhoeven – Soldaat Van Oranje
Poland:	Krzysztof Kieslowski – The Decalogue
Portugal:	Manoel de Oliveira – Amor De Perdição
Romania:	Ion Popescu-Gopo – Maria Mirabela
Slovakia:	Martin Sulík – Zahrada
Slovenia:	Boštjan Hladnik – Ples V Dežju
Spain:	Pedro Almodovar – Matador
Sweden:	Ingmar Bergman – Wild Strawberries
United Kingdom:	Ken Loach – The Gamekeeper

Annex 6: Questionnaire used For EFADs Survey

In order to assess the feasibility of the above mentioned VOD initiative, we would be grateful if you completed the following short questionnaire providing as much detail as possible. The idea of the initiative is described in John Woodward's letter to you sent by eMail on March 3rd.

Please return this questionnaire to Jan Runge at KEA (jrunge@keanet.eu / +32 2 289 2600) at the latest by March 24th 2008. Thank you very much for collaborating on this project.

Your name and contact details	
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Suggestion of Feature Film from your Member State

Question/Issue	Your Answer
Name of the suggested feature film for the portal:	
Is the film available as a digital master or is digitisation required?	
If it is digitally available - in what format and quality?	
Would the availability of the film for download and/or streaming via an educational VOD portal require additional rights clearance for exploitation?	
In which languages is the film available (subtitles/ dubbing)?	

Availability of Additional Information

<p>Does any additional information related to the film exist (synopsis, interviews with directors, articles, radio or video material concerning the film, further educational material, etc.)? Please specify if so:</p>	
<p>Are there any Online initiatives that would relate to such project, which could possibly be linked to such portal? Please provide an URL and contact details:</p>	

Context

<p>Could you briefly summarise the social, cultural or artistic rationale for including the title on a pan-European portal in order to reflect your country's cinematographic legacy?</p>	
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THANK YOU FOR TAKING THE TIME AND FOR SENDING THE QUESTIONNAIRE TO JRUNGE@KEANET.EU

Annex 7: Note on Budget Estimations for Feasibility Study

The budgets for the two proposed options in the appendices were established on the basis of desk research and consultations with European VOD service operators. Given the limited scope of the Assignment enquiries for actual quotes from technological service providers were not made. The cost items in the two budgets are estimates and may vary from provider to provider and across the EU. It should furthermore be noted that cost factors such as hosting, technical development, content development and staff costs are very dependent on the final scope of the project. Our consultations showed, for example, that European VOD providers' choice of server and hosting capacities vary greatly. While one provider's capacities were limited to enable 400 synchronous downloads others could facilitate 5000 - 15000 users of the service at the same time. Such difference in capacities translates into actual costs and our estimates for both options took this into account.

From a cost and project development perspective it made sense to limit staff costs to a small number of core staff (project manager, film literacy officer, technology officer, assistant). However, it should be noted that costs for freelancers that would contribute throughout the project are included in the operational costs in the budgets. Using subcontracting freelancers in such work is common practice across Europe. Based on the diagram and the above considerations a list of key costs items was established which helped to estimate the budget for different project options.

Staff Costs

- Project Coordinator
- Technology Officer
- Film Literacy Officer
- Assistant

Development Costs

- Creation of digital master
- Metadata tagging
- Transcoding into VOD delivery format
- Costs for establishing website
- Development of asset management system
- Implementation of DRM and technical protection measures
- Acquisition or development costs for learning content that could accompany a film
- Translation services for website
- Costs for subtitling

Operating Costs

- Storage of films

- Hosting of portal
- Asset management
- DRM license deal
- Cost per stream/ download (Internet)
- Different costs for different client/server solutions

Professional Services and Maintenance

- Legal services
- Technical maintenance
- Direct marketing costs
- Public relations
- Events

Annex 8: Budgets for Both Project Options

Stand-Alone Version

Total Costs	
Set-Up Phase	827.050,00 €
Running Phase Y 1	684.000,00 €
Total	1.511.050,00 €
Contingency of 15%	226.657,50 €
Total incl. Contingency	1.737.707,50 €

Stand Alone Version: Set-Up Phase

1. Personnel Costs

Roles	Number of Days	Day Rate	Total
Project Manager	220	500,00 €	110.000,00 €
Film Literacy Officer	220	400,00 €	88.000,00 €
Technology Officer	220	500,00 €	110.000,00 €
Assistant	100	200,00 €	20.000,00 €
Total			328.000,00 €

2. Operating Costs

Travel and Subsistence Estimate

Item	Number of Units	Price per Unit	Total
Flights	20	400,00 €	8.000,00 €
Overland travel	5	250,00 €	1.250,00 €
Overnight stays incl. per diems	12	200,00 €	2.400,00 €
Total			11.650,00 €

Development Costs (Items may be subcontracted)

Item	Number of Units	Price per Unit	Total
Concept and Design website	Allow for	25.000,00 €	25.000,00 €
Programming website	Allow for	30.000,00 €	30.000,00 €
Editorial services website	Allow for	10.000,00 €	10.000,00 €
Development asset management system	Allow for	20.000,00 €	20.000,00 €
Creation of digital master (subcontracted)	27	600,00 €	16.200,00 €
Transcoding into VOD format (subcontracted)	27	200,00 €	5.400,00 €
Subtitles per film (23 languages - subcontracted)	621	400,00 €	248.400,00 €
Metadata Tagging	27	100,00 €	2.700,00 €
Watermarking and DRM per film	27	100,00 €	2.700,00 €
Translation services	Allow for	10.000,00 €	10.000,00 €
Total			370.400,00 €

Educational Content

Item	Number of Units	Price per Unit	Total
License for standard online training module or adjustment of open source solution	Allow for	20.000,00 €	20.000,00 €
Authoring of app. 27 individual courses	27	1.000,00 €	27.000,00 €
Total			47.000,00 €

Professional Services (Items may be subcontracted)

Item	Number of Units	Price per Unit	Total
Legal Services	Allow for	15.000,00 €	15.000,00 €
Development marketing strategy	Allow for	15.000,00 €	15.000,00 €
Preparation of promotional material	Allow for	20.000,00 €	20.000,00 €
EU public relations strategy	Allow for	10.000,00 €	10.000,00 €
			60.000,00 €

Administration

Item	Number of Units	Price per Unit	Total
Admin costs	Allow for	10.000,00 €	10.000,00 €
			10.000,00 €

Total Set-Up Costs**827.050,00 €**

Stand Alone Version - Costs for Running the Service for One Year

1. Personnel Costs

Roles	Number of Days	Day Rate	Total
Project Manager	220	500,00 €	110.000,00 €
Film Literacy Officer	220	400,00 €	88.000,00 €
Technology Officer	220	500,00 €	110.000,00 €
Assistant	110	200,00 €	22.000,00 €
Total			330.000,00 €

2. Operating Costs

Travel and Subsistence

Item	Number of Units	Price per Unit	Total
Flights	30	400,00 €	12.000,00 €
Overland travel	20	250,00 €	5.000,00 €
Overnight stays incl. per diems	30	200,00 €	6.000,00 €
Total			23.000,00 €

Fees for Technology Services

Item	Number of Units	Price per Unit	Total
Equipment costs	Allow for	40.000,00 €	40.000,00 €
Hosting fees (incl. streaming fees)	Allow for	50.000,00 €	50.000,00 €
Technical maintenance of sytem	Allow for	25.000,00 €	25.000,00 €
DRM license deal and related training	Allow for	30.000,00 €	30.000,00 €
Maintenance of metadata	Allow for	6.000,00 €	6.000,00 €
Content services website	Allow for	10.000,00 €	10.000,00 €
Maintenance of website	Allow for	15.000,00 €	15.000,00 €
Total			176.000,00 €

Content Services

Item	Number of Units	Price per Unit	Total
Integration further educational content (licenses, cooperation agreements, own development)	Allow for	25.000,00 €	25.000,00 €
Total			25.000,00 €

Professional Services

Items	Number of Units	Price per Unit	Total
Legal Services	Allow for	10.000,00 €	10.000,00 €
Direct marketing costs (print, online)	Allow for	50.000,00 €	50.000,00 €
EU public relation services	Allow for	50.000,00 €	50.000,00 €
Events	Allow for	20.000,00 €	20.000,00 €
Total			130.000,00 €

Total running costs year one

684.000,00 €

Shared-Project Version

Total Costs

Set-Up Phase	409.750,00 €
Running Phase Y 1	372.000,00 €
Total	781.750,00 €
Contingency of 15%	117.262,50 €
Total incl. Contingency	899.012,50 €

Shared Project Version: Set-Up Phase

1. Personnel Costs

Roles	Number of Days	Day Rate	Total
Project Manager	110	500,00 €	55.000,00 €
Film Literacy Officer	110	400,00 €	44.000,00 €
Technology Officer	110	500,00 €	55.000,00 €
Assistant	80	200,00 €	16.000,00 €
Total			170.000,00 €

2. Operating Costs

Travel and Subsistence Estimate

Item	Number of Units	Price per Unit	Total
Flights	15	400,00 €	6.000,00 €
Overland travel	5	250,00 €	1.250,00 €
Overnight stays incl. per diems	10	200,00 €	2.000,00 €
Total			9.250,00 €

Development Costs (Items may be subcontracted)

Item	Number of Units	Price per Unit	Total
Concept and Design website	Allow for	20.000,00 €	20.000,00 €
Programming website	Allow for	20.000,00 €	20.000,00 €
Editorial services website	Allow for	8.000,00 €	8.000,00 €
Adjust asset management system of existing portal	Allow for	10.000,00 €	10.000,00 €
Creation of digital master (subcontracted)	27	600,00 €	16.200,00 €
Transcoding into VOD format (subcontracted)	27	200,00 €	5.400,00 €
Subtitles per film (5 languages - subcontracted)	135	500,00 €	67.500,00 €
Metadata Tagging	27	100,00 €	2.700,00 €
Watermarking and DRM per film	27	100,00 €	2.700,00 €
Translation services	Allow for	8.000,00 €	8.000,00 €
Total			160.500,00 €

Educational Content

Item	Number of Units	Price per Unit	Total
Licenses and cooperation agreements for educational content	Allow for	10.000,00 €	10.000,00 €
Total			10.000,00 €

Professional Services (Items may be subcontracted)

Item	Number of Units	Price per Unit	Total
Legal Services	Allow for	15.000,00 €	15.000,00 €
Development marketing strategy	Allow for	15.000,00 €	15.000,00 €
Preparation of promotional material	Allow for	15.000,00 €	15.000,00 €
EU public relations strategy	Allow for	10.000,00 €	10.000,00 €
			55.000,00 €

Administration

Item	Number of Units	Price per Unit	Total
Admin costs	Allow for	5.000,00 €	5.000,00 €
			5.000,00 €

Total Set-Up Costs**409.750,00 €**

Shared Project Version - Costs for Running the Service for One Year

1. Personnel Costs

Roles	Number of Days	Day Rate	Total
Project Manager	170	500,00 €	85.000,00 €
Film Literacy Officer	110	400,00 €	44.000,00 €
Technology Officer	110	500,00 €	55.000,00 €
Assistant	80	200,00 €	16.000,00 €
Total			200.000,00 €

2. Operating Costs

Travel and Subsistence

Item	Number of Units	Price per Unit	Total
Flights	20	400,00 €	8.000,00 €
Overland travel	8	250,00 €	2.000,00 €
Overnight stays incl. per diems	15	200,00 €	3.000,00 €
Total			13.000,00 €

Fees for Technology Services

Item	Number of Units	Price per Unit	Total
Share of equipment costs	Allow for	20.000,00 €	20.000,00 €
Share of hosting fees	Allow for	25.000,00 €	25.000,00 €
Share of technical maintenance fees	Allow for	12.000,00 €	12.000,00 €
Share of DRM license deal	Allow for	15.000,00 €	15.000,00 €
Maintenance of metadata	Allow for	6.000,00 €	6.000,00 €
Content services website	Allow for	8.000,00 €	8.000,00 €
Maintenance of website	Allow for	10.000,00 €	10.000,00 €
Total			96.000,00 €

Content Services

Item	Number of Units	Price per Unit	Total
Integration further educational content (licenses, cooperation agreements)	Allow for	10.000,00 €	10.000,00 €
Total			10.000,00 €

Professional Services

Items	Number of Units	Price per Unit	Total
Legal Services	Allow for	8.000,00 €	8.000,00 €
Direct marketing costs (print, online)	Allow for	15.000,00 €	15.000,00 €
EU public relation services	Allow for	20.000,00 €	20.000,00 €
Events	Allow for	10.000,00 €	10.000,00 €
Total			53.000,00 €

Total running costs year one

372.000,00 €

Annex 9: Further Support Schemes of Relevance to VOD

eContent plus

While not directly relevant for the economic development of the European film industry eContent plus is of importance with regards to the promotion of Europe's film heritage in a digital environment. It is therefore relevant with regards to the feasibility section in the study.

The eContent *plus* Programme is a support scheme that aims to make digital content in Europe more accessible, functional and exploitable. The budget for the current programme (2005–08) is €149 million. Among other things, eContent plus is used to facilitate EU-wide coordination of libraries, museums and archives collections and their conservation of digital collections so as to ensure availability of cultural, educational and scientific content for future use. In this context, the programme supports the European Film Gateway (EFG) which has received approximately €4,5 million under the Digital Libraries (Best Practice Networks) scheme.

The European Film Gateway is a follow-on project of MIDAS, a project initially funded by MEDIA that networked film archives. The fact that the film archives “migrated” to eContent plus with their new project indicates that the economic development approach taken by MEDIA does not suit all purposes related to film. This could be read as a sign that projects that follow a scientific or educational character will have to seek support outside of MEDIA's established support schemes.

Case Study: European Film Gateway

The *European film Gateway* is a network project initiated by the European Association of Cinematheques (ACE) and seeks to link the digital film databases of 16 European film archives with a view to make films available for free to anybody in the world.

The project is supported by eContent plus with €4,5 Million in the framework of the European Digital Library Initiative and will make available both film and non-film materials: stills and set photographs, posters and drawing, etc.

The project also tries to establish a common metadata structure for all participating archive repositories in order to enable the main Europeana.eu portal (the main website of the digital library initiative) to access all material. In order to achieve this, the project will also work on harmonising standards and specifications by reviewing, selecting and implementing common standards and by enabling for the first time interoperability of content across different domains.

The *European Film Gateway* is a Best Practice Network project. Running from 2008 until 2011, it is scheduled to launch its service by early 2010. 23 partners and 16 archives joined the initiative.

7th Research Framework Programme

While there is currently little involvement of the European film industry in research and innovation activities supported by the European Union there certainly is a potential to further integrate film stakeholders in research priorities pertaining to content markets. Furthermore, new topics of research that are of relevance to the sector could be examined by FP7. As outlined in the section on existing challenges – which supports ICT research with more than 9 billion

between 2007 and 2013 – could add significantly to the film industry’s ability to benefit from current technological changes. Closer collaboration between film stakeholders and initiatives such as the Networked Electronic Media Technology Platform and FP7 research priorities pertaining to content markets should be encouraged by the European Commission.