



Potential Reforms to European Union copyright rules

An initial view from European Film Agencies

EFADs Resolution, March 2015

Who we are

- The Association of the European Film Agency Directors brings together the Directors of European Film Agencies in 31 countries in Europe (EU, Iceland, Norway and Switzerland). We represent government, or government associated bodies, in charge of national funding for the audiovisual sector and with the responsibility to advise on all aspects of national and European audiovisual policies.
- Our aim is to help nurture the creation of high quality works to the benefit of European and global audiences reflecting the diversity of European heritage, cultural identities and artistic outlook within the audiovisual field in line with the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
- In total, the EFADs members and their Governments distribute an estimated 3 billion euros every year¹ with a view to fostering the creation, production, promotion, distribution and exhibition of European audio-visual and cinematographic works.

Executive summary

- Stable and clear copyright rules ensuring fair remuneration of creators and the ability to control the exploitation of audiovisual content in different territories are a fundamental characteristic of the audiovisual business model all over the world. Copyright is a powerful tool to stimulate creativity, learning and innovation. By holding copyrights and licences, creators, production companies, distributors and others have the opportunity to build sustainable businesses, to create high quality works and to finance future works.
- The EFADs do not see a need to change the current EU copyright framework but are ready to explore any measures that could further:
 - improve access to and the promotion of European works for audiences (through improved portability of content for example) without hindering the financing or exploitation of works;
 - more efficiently enforce rights.

¹ See footnote 1 of the Cinema Communication : «EUR 2,1 billion of support is provided annually by European film funds (<http://www.obs.coe.int/about/oea/pr/fundingreport2011.html>). According to the study into the economic and cultural impact of territorial conditions in film support schemes, a further, estimated EUR 1 billion is provided annually by Member States through film tax incentives (http://ec.europa.eu/avpolicy/info_centre/library/studies/index_en.htm#territorialisation).”

- Territorial licensing of rights is a key condition for sustainable investment in the sector and efficient distribution of works to the benefit of local audiences. Such licensing is both a driver of growth and one of the foundation stones which helps ensure a diverse range of high quality works is available to European citizens.

This first paper sets out the general principles shared by the members of EFADs. It will be followed by an in-depth assessment of the Commission proposals and concrete suggestions for actions.

General considerations

1. We fully share the objective to **promote the circulation of works** and their availability to an ever wider public. It is a core part of our mission to help European films to reach the largest possible audiences nationally as well as abroad. We do it because the circulation of high quality audiovisual works is an essential reflection of European cultural identities and heritage and because film is a powerful tool for international cultural exchange, education and learning. Moreover, backing for the European audiovisual industries, helps support skilled jobs, innovation and economic growth at a time of very high unemployment in many Member States, particularly among the young.
2. We consider the **current EU copyright framework to be fit for purpose**: by permitting a wide diversity of different licences and a clear set of exceptions, it helps works to circulate within the EU and enables distributors to invest in local marketing and communication for works. It provides a strong basis for current business models to evolve in response to people’s changing preferences as to how they access films and other audiovisual works.
3. In the audiovisual and cinematographic sector, completing the Digital Single Market should benefit citizens and consumers (i.e. the demand side) and, at the same time, ensure an environment encouraging investment in the audio-visual and cinematographic creation (i.e. the supply side). The audiovisual sector is a key contributor to both the culture and economy of Europe – and this dual contribution must be allowed to flourish and grow².
4. The priority of the EU should be the establishment of a **level playing field** ensuring equal treatment between all operators, a commitment to economic sustainability and engagement in the creation of local works. The key to securing the future development of a vibrant digital audio-visual culture industry in Europe is to invite new operators – European as well as global players – into the audiovisual value chain. The digital players should have the opportunity to meet new digital consumer demands, but under terms of trade that ensure the well-being of the creative sector.
5. Improving online cross-border access to European audiovisual works and services must not weaken authors’ and investors’ rights and not disrupt the sustainable financing of European works. We want the EU to remain an area fostering creation, culture and learning and reflecting

² According to an [EU-wide study](#) on the overall contribution made by intellectual property intensive industries to the EU economy carried out by the European Observatory on Infringements of Intellectual Property Rights and the [European Patent Office](#), IPR-intensive industries account directly for 26% of all jobs in the EU – around 56 million direct jobs. With the addition of 20 million indirect jobs, one in three of all EU jobs – 35% of all jobs – rely on IPR intensive industries. These industries generated almost 39% of total economic activity (GDP) in the EU, worth €4.7 trillion

cultural diversity and the interests of the audience in a wide choice of works. In particular, the **territoriality principle** on which the whole ecosystem of audiovisual and cinematographic financing is based must be preserved.

6. When considering changes to the current legal framework, we urge the European institutions to adopt an **evidence-based and targeted approach**, informed by impact assessments, and the possible consequences of any regulatory changes for audiences, growth, jobs, education and our cultural heritage. Above all, we should avoid any 'big bang' approach that would put at risk a sector in a time of significant adaptation and change. Any legislative action should be gradual and decided in close cooperation with the different stakeholders engaged at developing the digital audiovisual market.

Territorial licensing

7. Making a film is a **complex process** involving different types of financial support and mechanisms (private investors, co-producers, sales agents, distributors, public funds etc). It is also a **very risky** venture where success is never guaranteed.
8. The **contractual freedom** of producers, sales agents and distributors to exploit the work they produce, license and distribute on a territorial basis must be preserved. Licensing on a territory-by-territory basis is essential to raising financing for audio-visual productions of all kinds and thereby delivering cultural diversity to the benefit of audiences across Europe.
9. Territorial exploitation and exclusive rights are an economic mechanism to bring together right holders **and investors** and thereby **optimise the financing and** distribution of works. They serve as fundamental keys for fair and reasonable agreements between right holders and distributors fostering a healthy environment for free trade.
10. Territorial licensing is key to:
 - The **financing of audiovisual works**. Film and television producers depend on selling distribution rights to national distributors before filming starts as a way of financing. This practice, known as **pre-sales**, represents a very significant part of the financing plan of a film – sometimes the majority of financing is generated in this way. It is based on exclusive rights to exploit the piece of work in a specific territory. Removing territoriality would lead to less engagement of private investors in pre-sales, dramatically reducing the number of works created.
 - **Optimal return on investments** through multitude of exploitations that are a more efficient way to exploit and maximise the economical potential of audiovisual works. This enables the creation of more value and the capacity to reinvest in new creations.
 - Efficient and targeted **distribution strategies**, adapted to the various local audiences and local market situation. Having the possibility to access a piece of work on an online platform does not guarantee to attract an audience and ensure commercial performance. Success depends mainly on the promotion, communication and marketing activities adapted to the local audience. Territorial licensing is crucial to ensure **cultural diversity**. Removing it would imply a dangerous standardization of creation because only the biggest and strongest audiovisual actors would survive.
11. The market is already providing solutions to improve the **portability of** services and online cross border access for subscribers to a VoD service. This issue should be left to the market although public bodies could play a role in helping stakeholders to find sustainable business models.

Promotion of legal offers and enforcement

12. Growth will be **hampered unless effective measures** are taken by Member States to block or take down services, which carry stolen or infringing works. Effective promotion of legal online offers across Europe is vital.
13. Any reform of EU copyright law should go together with a **stronger enforcement of rights** policy through more ambitious proposals, legislative and non-legislative. For example, we strongly support the implementation of a **follow-the-money** approach involving the co-operation of advertising companies and payment services at EU and national level.
14. We call on the Commission to reflect on how to ensure stronger due diligence and **liability for technical intermediaries** and to further investigate the role search engines, internet service providers, payment systems and others could play to warn users about illegal websites, whether based within the EU or beyond, and to delist and/or deprioritise sites which offer infringing and/or stolen works.

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