



Committee on Legal Affairs

Working Group on Intellectual Property Rights and Copyright Reform

Meeting of Thursday 17 September 2015 from 09:00 - 11:00

in Brussels

Minutes

1. Adoption of agenda.

The agenda was adopted.

2. Approval of minutes of meeting of 2 July 2015.

The minutes were approved.

3. Roundtable discussion on "How to improve cross-border accessibility and availability of audio-visual works in the EU?"

Mr Jean-Marie Cavada opened the roundtable discussion by recalling that there had already been a hearing on the audio-visual in June, during which representatives of authors, interpreters, producers, consumers, VoD platforms and of universities were heard with regard to the modernisation of the European rules on the rights of the author. The political groups however, wished to go a bit further on this question and wanted to hear the rest of the actors of the audio-visual sector, namely the distributors, the television chains (public or private) and the film archives.

- **Presentation of the views of the speakers**

- Mr Hadida, president of FIAD, the Federation of International Associations of Film Distributors

In his presentation, Mr Hadida stressed the role of distributors in the creative chain. Using the analogous role of book publishers as an example, Mr Hadida explained that it is the distributors who are in touch with the creators and producers of audio-visual works and who decide to invest on a film, granting for that purpose financial advances for the creation and

promotion of works. Distributors for instance take care of the translation of film titles, the creation and circulation of posters and of the release of films in movie theatres. As a result, distributors are a key link in the creative chain, taking a considerable financial risk. Therefore, Mr Hadida was of the opinion that the granting of exclusive rights to distributors was absolutely vital for them to maintain this role in the creative chain and to be able to market films. When asked to indicate what was to be done to improve free movement of audio-visual works, Mr Hadida repeated that distributors need exclusive rights to continue to invest in the audio-visual, so as to open up the market and reach as far wide audience as possible. He also pointed out that rather than changing the way copyright is managed, it may be better to beef up how rights are used, explaining that piracy cuts the appetite for investment in audio-visual works as there is no income to be made via exclusive rights in this case. Finally, Mr Hadida confirmed that a small number of distributors would mean smaller investment in the audio-visual works would and affect the whole chain.

- Ms Nicola Frank, Head of European Affairs, European Broadcasting Union

Ms Frank introduced EBU by saying that its members are mainly public service media organisations which are rightholders that also produce, assemble and distribute original programmes for TV and radio and online. With regards to copyright reform, she stressed that a balance approach is very important. She explained that for the licensing process, the principles of contractual flexibility and territoriality are crucial as they enable rightholders and users to negotiate. Ms Frank stressed that EBU supports the idea of enabling crossborder access and of reviewing and updating the Cable and Satellite Directive to make it fit for the digital age. She thus emphasised that greater legal certainty is needed and pointed out that the licensing system for satellite distribution should be extended to the broadcasters' own online services so as to have a single applicable law. Ms Frank explained that the cable licensing model should be extended to the licensing model for underlying rights of linear programmes on all relevant platforms. To this aim, she argued that a country of origin system should be envisaged whereby the value of the licences would reflect the availability of languages etc. Explaining that in every audiovisual production there are over 100 underlying IP rights, she

reiterated the essential role of collective management, while also vowing for a technologically neutral solution based on contractual flexibility and territoriality.

- Ms Alexandra Lebret, Managing Director, European Producers Club (EPC)

Ms Lebret started by underlying that all stakeholders in films' production chain are interested in seeing them distributed as widely as possible. In this context, copyright constitutes a tool that enables the financing of and investment in films. She accordingly identified three parameters of territoriality for the distribution of audio-visual works: i) the pre-financing stage - 30% of films' budget comes from presales on the basis of the script only - ii) the financing stage - and distribution - post-production, films are sold in different territories.

However, Ms Lebret pointed out that the economic revenue from the digital economy is very disappointing today, as it only amounts to 1/7 of the traditional box-office generated revenue. In her view this is down to film piracy and the prevalence of business models which do not generate sufficient revenue. She also explained that, in the digital world, more actors are involved in the creative chain and that this combined with a lower unit price - 2€ instead of 7€ in the movie theatre release - results in lower revenues. Referring to SVoDs, such as Netflix, she clarified that this business model is based on buying films at a flat rate, without any royalties' payment, something which is less advantageous for the rightholders. Asked by Mr Cavada whether she wanted to see changes in Europe, Ms Lebret emphasised the necessity to involve all stakeholders in future discussions, suggesting that more industry rather than legislation could be the right solution. She also pointed out that portability of audio-visual works should be facilitated and that any further changes should be based on prior identification of all audiences as well as of various obstacles, such as languages and subtitles.

- Emilie Anthonis, Association of Commercial Television on Europe (ACT)

Ms Anthonis pointed out that commercial television has been a success story so far and that it is thus necessary to keep investing in its programmes. Currently, over 40% of revenues are reinvested in quality TV programmes. Explaining that there is consumer demand for various services (subscription video on demand, pay as you go programmes, TV online services), she underlined that TV programmes are culture and language specific and as such there is a very

limited demand for cross-border services. In the same direction, she pointed out that the Commission is still looking for evidence on this issue, whereas 54% of the people who try to access content from abroad are in his opinion successful, since national content is usually available. As a result, if geo-blocking was to be repealed, distributors would no longer have exclusivity and we would move towards a Pan-European licencing system that would be inaccessible to small actors. Therefore, in her view the appropriate solution to the problem lies in the review of the Cable and Satellite Directive - the principles of offline world are not applicable to the online world - as well as in the facilitation of portability of services. This in her view would be a win-win solution for both consumers and distributors, provided sufficient safeguards are put in place to ensure that portability does not end up being cross-border access.

- Mr Nicola Mazzanti, President of ACE-Association des Cinémathèques Européennes

Mr Mazzanti started by explaining that his association represents 46 institutions in Europe giving access to cinema and distribution platforms, with a collection that covers almost the entire European patrimony. In other word, these institutions conserve, preserve and show films. Moving on, Mr Mazzanti emphasised that non domestic European cinema is not going very well and that only domestic film production is growing. He pointed out another issue that only 2% of their production can actually reach the markets - 98% of cultural and historic film cannot reach the consumers. Therefore, he pointed out that there are no blanket solutions and that a sectoral approach might be the right way forward in copyright for audio-visual words. He also mentioned that the 98% of the material should be made available and available across borders. In the area of European cultural patrimony such a sectoral approach should be aimed at cutting down the transaction costs and territoriality.

- Ms Christine Eloy, General Manager, Europa Distribution (European Network of Independent Film Distributors)

Ms Eloy stressed that distributors are ensuring the circulation of films and that this is a very risky business. She explained that all supports should be used for the dissemination of films (TV, DVDs, BlueRay and the digital world). Making a quick reference to the TIDE

Experiment, she emphasised that the promotion of films is essential as this creates demand. It is thus of utmost importance that a safe environment is created, whereby piracy does not jeopardise distributors' chances to recoup the investment made in a film. To this direction education of the general public is also very important.

General Q&A session:

The following spoke: Jean-Marie Cavada, Daniel Dalton, Helga Trüpel, Victor Hadida, Christine Eloy, Emilie Anthonis, Alexandra Lebret, Nicola Frank, Nicola Mazzanti, Dietmar Köster.

In the subsequent Q&A session, the issue of cross-border access and alternative business models was mainly discussed. While asked whether, provided exclusivity of rights and territoriality are maintained, distributors could imagine offering legal platforms if people were willing to pay, Mr Hadida replied that if a consumer has bought access to a product, this access needs to be protected not on a general basis, but based on the country of initial purchase. Copyright provisions do not obstruct this scenario. Regarding the legal platforms, copyright would not impede either the right to use them locally. In any case, the enforcement of copyright rules is a key element to give security to distributors. Asked whether the production budget could also cover the cost of promoting a film from one territory to another, Mr Hadida replied that there are 23 different markets in Europe and that at the end of the day local adaptation of the films depends on the success of the film in the original market and that the translation of a film is key for its accessibility.

Moving on, the following comment was made by a Member: based on the speakers' contributions it appears we live in a non-digital world. Pointing out that only 36% of books in the UK are sold in physical bookshops he enquired whether the distributors are missing a large part of the market, hence encouraging piracy, considering that many people access cross-border content via VPN when they are willing to pay to have access to that content in a legal way. Mr Hadida reiterated that the revenues coming from the digital world are not equivalent to the traditional way of exploitation of audio-visual work. More importantly, promotion of films is very important since many people often ignore some of the movies released locally. Moreover, if everyone who wishes to watch a film goes online and pays for a service that will not give back any remuneration to the distributors, there will be no

possibility for the latter to recoup their investments in the production and promotion of that film. In Mr Hadida's view, this whole discussion does not stem from the lack of accessibility, but from the pressure to accommodate the interests of the big international platforms.

Next, a Member inquired how it would be possible to encourage innovation and production for smaller minorities, while guaranteeing that such works will be financed. Another question raised was about the possibility and interest of film heritage institutions to show films after they are released. Mr Mazzanti accordingly explained that a linear distribution cycle does not work anymore since 10 years old films can be accessed cross-border without any distribution rights being violated. Therefore, the market should be seen as a big single market, analysing the needs and specificities of the different sectors therein. That way, we could potentially produce additional revenue via the increase of accessibility to audio-visual works through digital platforms. The issue of necessity to translate old films after the expiry of distribution rights was also raised. Ms Eloy suggested that she had nothing against portability and cross-border access, which effective would suggest that there is no necessity to release works in one country, whereas Mr Anthonis stressed that the existing system guarantees the viability of the industry and that thus, there is no ideal solution.

The fact that consumers are not sufficiently considered in this one-size fits all policy was pointed out by a Member who thus asked whether in the long-run an alternative system could bring further revenue to distributors. Ms Lebret responded that the digital economy is not profitable yet. As a result, a new model needs to be found where VoD platforms would be more actively involved in the financing of films and would also provide more input on audiences' preferences. Ms Frank stressed that there is a difference between the portability of services and cross-border access and that more legal certainty is needed as well as efficient systems to clear rights with creators. Finally, Mr Hadida emphasised that distributors are not hostile to the digital world, recognising that the existing system needs to be adapted and updated. In the meantime, there is an effort to meet the needs of niche audiences in different ways, building for example platforms specifically addressed to them. That being said, a solid structure is needed and a new model would to be adapted to the financial and technical requirements. Concluding the session Mr Hadida pointed out that distributors' aim is to reach the entire audience; the means of achieving that need to be carefully considered.