

23 September 2022

***Commission Stakeholder Dialogue on improved access
to and availability of audiovisual content across the EU***

**Film and Audiovisual Sector Joint Roadmap for further improvement of access
to and availability of audiovisual content across the EU**

Recalling Action 7 of the 2020 Media & AV Action Plan which calls on the European Commission to “launch a dialogue with the audiovisual industry in order to agree on concrete steps to improve the access to and availability of audiovisual content across borders in the EU”.

Recalling that all Stakeholder Dialogue participants representing creation, production, distribution, and exhibition have highlighted time and again during the Stakeholder Dialogue the fundamental role of territorial licensing and exclusivity in driving investment in creation, financing, marketing, and distribution – and thus availability - of all types of film and AV content¹ across the EU and across all distribution channels, from theatres to various forms of online distribution².

Recalling the active and constructive dialogue promoted by the observations made by stakeholders and welcoming the opportunity presented by the Stakeholder Dialogue to take stock of market developments, and to highlight the constant evolution as regards the creation, production, marketing, distribution and showcasing through all offline and online channels of high quality, culturally and linguistically diverse film and AV content across the European Union.

Recalling the pragmatic and constant adaptation by the film and AV sector in Europe to the cultural and economic realities of a European Union comprising 27 countries with diverse national and regional cultures, habits, market conditions and audience demand, requiring

¹ E.g., cinematographic works, TV drama/series, documentaries, and all other forms of AV content, including sport.

² For examples of the role of territorial licensing in film/TV content financing, see select case studies [here](#). Another example is [Another Round](#), by Thomas Vinterberg and produced by Zentropa, where 38% of the production financing was raised on a territorially exclusive basis. Illustrating the role of territorial exclusivity in the successful release across various territories over a period of [time](#), *Another Round* built up overwhelming European audience success over several years, with over 1.04 million admissions in the EU following its release on 24 September 2020, followed by an additional 1.99 million across 26 EU territories in 2021, [according](#) to the European Audiovisual Observatory. Moreover, territoriality allowed *Another Round* to be released with maximum visibility and locally tailored marketing in each territory throughout 2021, also considering local cinema closures due to the COVID-19 pandemic. Another example is [The Square](#) by Ruben Östlund, a coproduction between 5 European countries. Almost all European territories were pre-sold on a territorially exclusive basis prior to the 2017 Cannes Film Festival premiere except for Italy and Bulgaria, thereby contributing 25% to the necessary production financing.

culturally and linguistically tailored approaches to content development, production, marketing, distribution, and exhibition on all channels, from theatres to various forms of online distribution.

Recalling the role of the EU Portability Regulation in improving accessibility to film and AV content when European residents travel abroad³.

Recalling the indispensable role territorial exclusivity continues to play in securing funding for content development, creation and production, as well as allowing acquisitions by sales agents and local distributors, and for organising the optimal marketing, distribution and exploitation (theatrical, physical carriers, broadcasting and online) of all types of content, including creating a market/audience demand for both national and non-national content, and for securing consumer welfare in terms of diversity of content and access opportunities offered⁴.

Recalling our collective ambition to respond to evolving audience demand demonstrated by more than 20 years of embracing the opportunities – and challenges - created by digital technologies in offline and online promotion and exploitation – whether in cinemas, on physical carriers, in various forms of online distribution, etc. - to offer a diversity of content across multiple distribution channels at various price points to the benefit of European audiences.

Recalling that this ambition is supported by ongoing and long-term investments by industry and public authorities representing concrete steps towards delivering the surge in availability of content and new services evidenced by recent data by the European Audiovisual Observatory⁵ reflecting the important progress made since the publication of the MAAP in 2020 and the Report on the review of the Geo-blocking Regulation in 2021⁶.

Recalling the crucial political and financial incentives, including public funding, provided by European, national, and regional authorities which have permitted the film and AV sector in Europe to raise substantial private investments for new productions, marketing, international and local distribution online and offline and exhibition, as well as deploying new digital technologies and services to the benefit of industry and audiences alike. In so doing, assisting “industry to scale up and reach new audiences, and benefit European citizens by giving them a wider choice”, one of the stated goals of the MAAP.

Recalling that market-led initiatives have driven an exponential development in the availability and circulation of European films and AV content over the past many years⁷. Noting that where there is no or little demand, services providing for cross-border access to unlicensed territories (e.g., title specific TVoD services) have struggled to reach profitability

³ <https://digital-strategy.ec.europa.eu/en/news/commission-publishes-staff-working-document-reporting-cross-border-portability-online-content>.

⁴ [The impact of crossborder access to audiovisual content on EU consumers](#), Oxera 2016; [The impact of including AV in the EU Geo-blocking Regulation](#), Oxera 2020; and [The impact of potential changes to geo-blocking regulation on sport](#), O&O 2020.

⁵ [Circulation of European Films on VOD and in Cinemas](#), EAO 2022; and [Film and TV content in VOD catalogues](#), EAO 2022.

⁶ <https://digital-strategy.ec.europa.eu/en/news/commission-publishes-its-short-term-review-geo-blocking-regulation>.

⁷ Ibid.

and to attract private investment⁸. Consequently, where such services may increase access in unlicensed territories, this is likely only possible through a combination of public support and marketplace investment where this does not undermine business fundamentals, IP rights and/or competition rules.

Recalling the European Commission's commitment to an evidence-based policy-making, informed by the best available evidence⁹ - and thus the requirement that new policy and regulatory initiatives be preceded by evidence of an actual and demonstrable "problem" and a robust assessment of "the extent to which such initiatives would meet their objectives, with what benefits, at what cost, with what implications for different stakeholders, and at what risk of unintended consequences".¹⁰ To this effect, we remind the European Commission of the repeated request by a large majority of Stakeholder Dialogue participants to invite the European Audiovisual Observatory to present its latest findings to the Stakeholder Dialogue participants, thereby grounding the discussion in market insights rather than political considerations.

Recalling that the inherent goal of the Stakeholder Dialogue, i.e., that the "audiovisual industry should be able to benefit from Europe" necessitates the improvement of EU legislation ensuring that the value of the content developed and distributed is safeguarded against illegal access and unauthorized distribution. The film and AV sector has consistently called for improved and targeted legislative tools to address online piracy. Reiterating the film and AV sector's expectation that the European Commission urgently present measures to demonstrate, beyond a mere recommendation and building on the Digital Services Act, how it intends effectively to tackle the issue of piracy in its 2023 Work Programme.

The undersigned organisations representing film and audiovisual producers, cinema exhibitors, distributors and publishers of film and audiovisual content online, sales agents, online distribution platforms, commercial broadcasters and sport rights owners, and their constituencies:

Reaffirm:

- I. Our continued commercial interest in and commitment to increasing the offer of culturally and linguistically diverse content through multiple offline and online distribution channels in each territory of the European Union rooted in actual audience demand and demonstrable economic logic.
- II. Our interest in developing together with public authorities at EU, national and regional level strong support for cultural diversity in production and in distribution through market-led industry initiatives and partnerships to drive further and increased access to and availability of content across the EU, in particular by way of:

⁸ In 2018, Pantaflix CEO Nicolas Sebastian Paalzow stated: "*the VOD platform has not yet progressed at the speed we would have liked*", [Pantaflix Annual Report 2018](#). In 2021, the originally planned growth expectations of the VoD platform could not be realized in the corresponding scope and period despite targeted investments in marketing and personnel. [Pantaflix Annual Report 2021](#), p. 26.

⁹ Commission's [Better Regulation Guidelines](#), SWD (2021) 305 final of 3 November 2021, p. 4.

¹⁰ Commission's Better Regulation Guidelines, cit., p. 34.

- a. **Co-productions:** Fostering and enhancing conditions for co-productions to thrive, including in particular in small/medium production capacity Member States.
- b. **Distribution across all offline and online channels:** Incentivising pre-sales/acquisition of future international and local distribution rights, promoting a diverse and competitive ecosystem of world sales agents, national distributors and showcasing operators across all channels offline and online in all EU Member States, and fostering a diverse and competitive ecosystem, including world sales activities. In particular supporting risk-taking in acquisition/renting of rights in and promotion of non-national European films through theatrical release and various forms of online distribution under the MEDIA Programme and various national and regional programmes:
 - i. This could take the form of increased title-specific support at European and national level, dedicated to the acquisition, promotion and showcasing of films theatrically and online.
 - ii. When not covered by a distribution support, develop increased support dedicated to localisation costs (subtitling and dubbing) where rights are handled by the producer or the sales agent.
 - iii. Increased support for technical preparation of content (encoding).
- c. **Circulation and promotion of European film heritage:** Dedicated funding in the MEDIA programme and in national programmes for the restoration and digitisation of European film heritage as well as support for localisation, encoding and promotion/distribution in national and non-national territories¹¹.
- d. **Access in unlicensed territories:** Where commercial distribution is not present or expected, right holder option on a voluntary basis, and in full respect of commercial and contractual freedom, to offer access to audiences resident in such unlicensed territories via bespoke TVOD services relying on public support complemented by market place investment where this does not undermine business fundamentals, IP rights and/or competition rules, noting that such services have so far struggled to reach profitability and to attract private investment as mentioned above.
- e. **Discoverability tools:** Further development and promotion of meta data tools and digital prints as well as discoverability tools at national level, including title-based search tools, accompanied by increased consumer awareness-raising initiatives. Discoverability services should cover as many distribution channels as possible (cinema, broadcasting services, physical carriers (DVD/Blu-ray) and various forms of online distribution OTT, transactional/subscription, and advertisement-based models).
- f. **Effective legislative remedies to address piracy:** As indicated above, digital piracy remains an existential concern for the film and AV sector, and the

¹¹ E.g.: <https://kafkadesk.org/2022/07/18/hundreds-of-polish-movies-made-available-online/?fbclid=IwAR26iWk7CvDnPERLgISSpI95E8FTYyISdigq48XD9OIJdnrstBDrebhr4yl>;
<https://35mm.online/kolekcje/kolekcje>

absence of effective legislative remedies represent an increasing barrier to investment in content and services. We continue to stand ready to address the matter in cooperation with the European Commission and EU decision-makers in general. With the 'horizontal' Digital Services Act now in place, there is an ideal opportunity to pursue a legal instrument addressing online piracy, in particular for the take down of illegal live and time-sensitive content. We call upon the European Commission to address this matter with the utmost urgency, in order to deliver an adequate legal framework for the protection of films and AV content against rampant online piracy.

The recent figures of the European Audiovisual Observatory demonstrate a high increase of film and AV works available across Europe. Further progress can be accelerated by reinforced cooperation between the industry and European, national, and regional authorities as outlined above aimed at promoting cultural diversity policy goals and responding to actual and demonstrable audience demand for content and access/services. Such progress can be benchmarked by building on regular reports by the European Audiovisual Observatory on current market developments, building on the recent 2022 studies.

Signatories

ACT - Association of Commercial Television and VoD Services in Europe

ANICA - Associazione Nazionale Industrie Cinematografiche Audiovisive e Digitali*

CEPI - European Audiovisual Production Association

CICAE - International Confederation of Arthouse Cinemas

Eurocinema - Association de producteurs de cinéma et de télévision

Europa Distribution – Association of Independent Film Publishers and Distributors

Europa International - European network for sales agents

European VOD Coalition - European Video on Demand Coalition

Fedicine - Federación de Distribuidores Cinematográficos*

FIAD - International Federation of Film Distributors' and Publishers' Associations

FIAPF - International Federation of Film Producers Associations

IFTA – Independent Film & Television Alliance*

IVF – International Video Federation*

MPA – Motion Picture Association

SPIO - Spitzenorganisation der Filmwirtschaft

SROC - Sports Rights Owners Coalition

UNIC - International Union of Cinemas

VAUNET - Verband Privater Medien e.V.*

*Endorsing the above Roadmap while not invited by the European Commission to contribute directly to the Stakeholder Dialogue