

## **COMMUNICATION from the COMMISSION on “CREATIVE CONTENTS Online”**

### **UNIC’s position**

UNIC represents the national Federations of cinema exhibitors from 16 countries (Germany, Austria, Belgium, Denmark, Spain, Finland, France, United-Kingdom, Italy, Norway, the Netherlands, Switzerland, Israel, Ireland, Greece, Hungaria) situated mainly in Europe and the companies Europolaces, Kinopolis, UGC, Utopolis Group. It represents more than 900 million cinema-goers and approx. 28 000 screens.

Its role is to promote and defend the interests of the exhibition business with European and international authorities.

The communication from the Commission exists in a context of multiple challenges, with economic objectives (new technologies, new services...) as well as cultural.

The Commission launched a public consultation in July 2006 in which UNIC took part. The Commission wanted to follow up on this, in order to reinforce the development of on-line creative contents in Europe.

We note that the VOD offer already exists all over Europe and is developing fast, as shown by the study done by NPA Conseil (March 2006) and the statistics of the European Audiovisual Observatory.

The four actions selected by the Commission are:

- availability of creative contents
- multi-territory licensing for creative content
- interoperability and transparency of DRM (digital Rights Management Systems)
- legal offers and piracy

Generally speaking, UNIC questions the legal definition of « creative » content.

The press, cinema, and music have little in common and are very different industries in terms of investments and amortization so it is difficult to find a common legal and economic frame. Also, the concept of « *economy of scale* » p.2, 3<sup>rd</sup> paragraph, has no meaning for cultural industries, which are industries of prototype.

The question of licences and the interoperability of DRM affects right-holders as well as most of the questions asked in the appendices, but UNIC questions the interest to uniformise the licencing system. The rights, if sold for Europe as a whole, will be less lucrative for the right-holder than the sale per country. For years, national laws have developed rights that are good for a given economic model and a nation and not for another. The means of payment for

the creators of intellectual property are not the same and these differences do not affect the circulation of works between countries.

UNIC is directly affected by the question of the legal offer and piracy that has an impact on the attendance in cinemas and will answer to question 10: « *The agreement signed in France, is it an example to be followed?* ».

UNIC has always explained that the theatrical release is decisive for all the future distribution (DVD, VOD, Pay per View, pay TV, free to air TV).

It is the preferred choice for producers, because the cinema screen allows one to take full measure of the quality of a work and guarantees better revenue per spectator for the film.

New exhibition windows, like broadcasting films on the Internet must not challenge the exclusivity of the theatrical release for a time period both reasonable and significant.

The European Commission and many European countries have developed strong policies for the support to the production and distribution of films, which is positive. It is just as important and logical to defend this first exclusivity of the theatrical release.

The broadcast windows are the result of the territoriality rights per country and the availability of films legally on-line is organised depending on the national distribution, this explains the differences between Member States.

The non-harmonisation of the windows throughout Europe is not a problem, so long as the rights are sold individually in each country. These windows has a meaning and is vital for the financing of cinema. There is no other appropriate model. It represents a clear and balanced element for the audiovisual industry as a whole.

France signed a first agreement in December 2005 with Internet access providers that allows a 33 weeks window for VOD.

In November 2007, a new agreement saw to the setting-up of an administratively independent Authority in Autumn 2008, whose role is to implement measures for fighting against piracy, which means a gradual answer. Following which the parties involved have agreed to rediscuss the windows.

The French exhibitors want to maintain the 33 weeks window and not be the only ones fighting against piracy. However, if this delay were to be shortened, they would ask to review all the terms and conditions for broadcasting films.

We must salute the signing of such an agreement between 42 signatories, which shows a firm will to develop the legal offer and to fight against piracy but it must not be done to the detriment of the exhibition industry. Piracy is independent from the period of exclusivity of the theatrical release as sometimes films are being pirated even before their release.

The agreement is meant to be followed or adapted in other European countries as the conditions and windows are different. It is one of the main challenges in the coming years.