



EPC Response to the Reflection on a Digital Single Market for Creative Content Online

The European Producers Club (EPC) is an association of Europe's most influential independent film producers. We act as a professional network, a think tank and an advocacy group, informing our members about current issues affecting the film industry, and taking concerted action on their behalf. EPC strives to promote intra-European coproduction as well as Europe-third country coproduction through coproduction forums, training workshops, conferences and networking events across the globe.

EPC also coordinates the European Producer Associations Alliance (EPAA), an alliance of 35 European national producer associations, as well as the European Cinema Network (ECN), an online film network.

We would like to congratulate the EC on a quality reflection paper, which adroitly raises a large number of problems inherent to the creation of a digital single market. A large number of producers' concerns were taken into account. However, we would like to share some remarks.

1/ The issue of piracy is notably absent.

We cannot insist enough on the devastating effects of piracy with regards to the creation of an offer of online films. There is little need to reassure the

consumer (against what?) or to swell offers, or even to legislate, without first establishing a European strategy for fighting piracy.

On this topic, we support the Hadopi law, recently adopted in France, and impatiently await the first positive results of its application, in order to promote its extension throughout Europe.

2/ Concerning the obstacles identified for the development of online services :

- The dissemination of rights between the different parties involved in a work is indeed a constraint that needs to be taken into account. As the reflection paper correctly points out, producers play a fundamental role as a central rights clearing point. We would propose to reinforce this role through structured agreements with rights holders. Producers would ensure the redistribution of rights to rights holders. Producers must play a central role in the exploitation of works. Naturally, producers would ensure the payment of remuneration proportional to exploitation revenue and would remain accountable to all concerned parties.*

- Concerning release windows. It is important to remember that release windows are determined, either by law or by contract, by the various players of the film industry. These agreements are based on negotiations that involve a large number of industry players, who*

represent the market. These players decide whether or not to modify release periods. Each modification requires lively negotiation and involves a number of factors. Market regulation works very well in this respect. There is no need for regulation at a European level.

3/ Concerning the main challenges identified in the reflection paper

We would like to state our surprise at the primary importance given to consumers' needs. The main challenge we are facing remains and will long remain: piracy!

Concerning consumer needs, we were surprised to read that the price at which online products are proposed is a problem for consumers.

4/ Concerning copyright

We are not favourable to a harmonisation of copyright laws at a European level. The differences between creators' rights between Member States have never been an obstacle to the circulation of works. On the other hand, the dissemination of rights can be considered by some to be an obstacle. We propose a reinforcement of the producer's role as an aggregator and a redistributor of rights.

5/ Concerning collective rights management in the exploitation of audiovisual and cinematographic works:

Producers appreciate the role played by these organisations and would like to see it extended to a European level, where necessary.

6/ Concerning possible EU actions for a single market

1. On consumer access. The reflection paper gives primary importance to the consumer and in particular to the trust that should be given to consumer during the purchasing of works. Again, the main problem is not consumer trust but rightsholders' trust!!! If there is no massive means set in place to counter piracy, rightsholders will have no confidence in this circulation method.

It is to be noted that the economy of film is one of offer and not of demand, ie. the offer creates the demand. For the offer to be created, rightsholders must be protected.

2. Concerning multi-territorial licensing

Regarding the multi-territorialisation of licences: while we are not against a single market, it goes without saying that we cannot give our content away for free. Revenues received for a pan-European licence would be far less than if selling country by country. Potential recoupment on a second market is impossible (as history has showed us).

Moreover, the territorialisation of film releases takes into account two market constraints that make pan-European releases impossible:

- *budget constraints. Given the under-capitalisation of production companies, and their cash problems, films need to open at the earliest possible date in order to recuperate investments as quickly as possible. A pan-European release wouldn't be able to fit into these rapid release dates;*
- *the constraints linked to media used for film promotion;*
- *the first direct consequence of pan-European licencing would be the uniformisation of language, in favour of English of course, and the loss of the use of our native languages. We will have a single language market, and a loss of our cultural identity.*

8/ Extension of the satellite and cable directive to the delivery of online content

Extending this directive seems unjustified to us for the delivery of films online. The reflection paper mentions the possibility of delivering works to several countries. However, the possibility of a legal structure proposed by the directive has never actually been used...

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