EFADs Position Paper

The creation of a Digital Single Market for the audiovisual industry in Europe

May 2015

The European Commission's ambition to complete the Digital Single Market in Europe presents both significant opportunities and challenges for the audiovisual sector. The opportunities are to capitalize on the benefits presented by digital technologies to drive innovation and economic growth, to create jobs, to strengthen the European audiovisual industry and thereby enhance cultural diversity to the benefit of Europe's citizens. The challenge is to ensure that this is done in a sustainable way and that film companies retain the freedom to adapt to digital change as they see fit.

We - the EFADs – want to highlight what we see as the major opportunities and challenges presented by the development of the Digital Single Market. We want to contribute to the debate by communicating our twin ambitions to foster a growing audiovisual economy and to secure the continuous development of audiovisual works reflecting the cultural diversity of Europe. We want film to be at the heart of Europe's broader digital economy and to play its full part in helping achieve the Commission's ambitions for the Digital Single Market. The EFADS will set out their detailed views on these matters as the Commission publishes specific policy proposals in different areas.

Our core messages

1. The transition to a digital world is very welcome; it has significantly increased audience choice and is creating huge new opportunities for the creation and distribution of audiovisual works. In this respect, the development of the digital audiovisual market should be seen as an **economic and cultural opportunity** for Europe. The demand for high quality films and series[1] reflecting everyday life and culture within a diverse Europe should be regarded as a key engine for the creative, cultural and economic development of the EU.

2. The EFADs are eager to seize the opportunities presented by the Digital Single Market which we believe **provides the basis for the increased circulation of European films**, to the benefit of the European film industry and Europe's citizens.

[1] Hereafter as referred to "films"

3. However, both the **financing of European films and distributing them to audiences can often be challenging processes**. Given the scale of both the opportunities and challenges which exist within the digital environment, it is important that policy-makers adapt existing fiscal, regulatory and competition law frameworks in a way that enhances cultural diversity over time, rather than diminishing it.

4. In particular, it is important that ways are found to stimulate **the growth of online distribution so that it benefits the financing, production and distribution of European films**.

<u>The state of play</u>

5. In most European countries **national films are popular with national audiences** and in some countries the market position of local material is remarkably strong given the size of the domestic industry. Together in Europe we make co-productions by exchanging creativity, know-how and finance. We aim to project distinctive cultural identities to ourselves and to the rest of the world. Overall, in 2014, the market share for European films reached record high of 33.6% (highest recorded since 1996) according to the European Audiovisual Observatory (EAO).

6. Nonetheless, the financing of films in Europe is often a challenging process. The film production sector in Europe is largely composed of **independent companies which are often dependent on national and EU funding to create and distribute films**, because of the market failures which affect film. The size of the public contribution varies from country to country in terms of volume as well as the political and legal framework governing support to the sector. The private sector invests risk capital, mainly through production and distribution companies. Investment from the capital markets into the European audiovisual production sector is very limited, although initiatives have been taken at EU level to stimulate this kind of private investment.

7. **Digital developments are affecting financing structures for film throughout Europe**. In recent years the proliferation of digital services has fragmented the film market in Europe, and fragmented revenues. There has been a very significant decline in revenues from physical media such as DVD, as well as a decline in the money paid for rights by terrestrial broadcasters and pay-tv providers. Online consumers increasingly prefer to access films via subscription VOD services, or services financed by advertising, both of which typically return much lower revenues to right holders than traditional services.

8. For illustration, the total European audiovisual market experienced in 2013 a second year of stagnation generating around EUR 133 billion in total market revenues. **The growth in on-line services at 46 % from 2012 to 2013 was unable to compensate for the decline in other sectors** of which the physical video market was most affected by the digital change with an 11 % decline. Integrated VOD-services such as television and ISP based VOD (TV VOD) shows a moderate growth rate at 16% (2012-2013) while purely Internet based VOD (OTT: Over-The-Top) is gaining ground, notably SVOD (subscription VOD) which shows a 148 % growth rate.

9. In addition, the EFADs estimates that **less than 50 % of recent national releases are available** through digital services targeted the domestic audiences.

10. **The public purse alone cannot compensate for this decline in the revenues** which are used to finance the future production of European audiovisual works.

11. The new digital distribution channels have not yet shown their full potential as investors in local audiovisual works through pre-buying rights nor will all of them necessarily be interested in playing a part in funding European film productions. The strategic challenge is to secure a **stronger economic commitment from newer online services equal to the established players** such as cinemas, distributors, public and private television.

12. The challenge is reinforced by the continuing overall **dominance of films distributed by the US majors in the European market.** These studios benefit from a number of advantages; e.g. US material has a large home market with a common language, which gives the US studios a strong basis for European distribution at low marginal cost.

<u>**Our recommendations**</u>

<u>***>> Building a sustainable and fair market place***</u>

13. **The partnership between the private and public sectors is the backbone of the European film economy.** From a Member State perspective the EU Treaty and the supporting **legal framework should be flexible** enough to allow **the** development of digital policies and financial support systems according to national structures, opportunities and visions.

14. From a pan-European and global perspective Europe should **welcome the digital players as long as they are committed to take part in keeping the market sustainable as a distinct European market**. In return, the traditional market players should be encouraged to be open to the restructuring of the marketplace to the benefit of all.

15. A future EU legal framework should be targeted at creating a **level playing field** between all European and global market players. In Europe, "level playing field" means an **equal commitment from all market players** in the creation of local content and respect for national rules and common European values e.g. when it comes to advertising and the protection of minors. A level playing field should mean that all operators should have the ability to succeed in a market which in cultural, artistic and economic terms is rich but is also fragmented.

16. The current design of the **country of origin principle in the AVMS-directive** provides regulatory clarity, but might not be entirely fit-for-purpose in an Internet-based digital economy. We need to have the flexibility to integrate the new digital services into the different financing models around Europe without undermining the freedom of establishment. In this respect **the review of the AVMS-directive should analyse ways to establish equal treatment** of all stakeholders in the national and European market place as well as seeking to guarantee cultural diversity and to promote the competitiveness of all European operators.

17. Special attention should also be given to new kinds of barriers for **an open and competitive Digital Single Market in the audiovisual sphere**. Today, the digital market is characterized by new kinds of services based on the integration of hardware and audiovisual media, such as smart television and entertainment devices giving access to some global content services and not offering others. In this respect, **there is a risk of misuse of dominant market positions by hardware companies and digital service providers.** It is crucial that Europe's citizens have a real **freedom of choice as to** which local or global services they want to access.

18. Given the ambition to promote a distinctive European market place the EFADs believe that Europe has a unique opportunity to build a flexible**, competitive and transparent Digital Single Market to the benefit of the European citizens.** There is no quick fix but the right regulatory and competition regime is essential if this ambition is to be achieved.

>> Enhancing access to and promotion of European works

19. National and international VOD operators represent a significant growth opportunity for film. Their digital business strategies are designed to offer premium catalogues with a high degree of **flexibility as regards the provision of content within the existing copyright framework.** In return, the digital players should **integrate measures targeted at strengthening the European film economy** within their business models. This could be done, for example, by contributing to the financing of European films and series and helping to ensure more effective promotion of European film.

20. The AVMS-review should also be the occasion to examine how to efficiently promote European works and ensure audiences have wider access to them.

21. The question of **access to** European feature film and serial formats and the ability to find them online is also an important issue to address. Besides being "without frontiers" the Digital Single Market should be designed to give European citizens **new opportunities to access the richness of European film culture**. In part, this should be done by ensuring access to a more attractive legal offer of European films.

22. In addition, it is crucial that public stakeholders have **access to market data about VOD** at national and European level, so that they understand the direction in which the market is heading. This will help to ensure that public policies and support systems remain fit for purpose.

>> Copyright

23. Stable and clear copyright rules ensuring fair remuneration of creators and the ability to control the exploitation of audiovisual works in different territories are a fundamental characteristic of the audiovisual business model all over the world. The **territoriality principle** on which the whole ecosystem of audiovisual and film financing is based must be maintained. It should be stressed the territoriality principle is not the same as, nor a defence of "geoblocking". Instead, it should be regarded as a crucial **tool to create a balance in negotiations between the supply side (the creators and producers) and the demand side (the media services)**. It helps secure creative risk taking and future investments in high quality European films. The current copyright regime is to a large extent fit for purpose and does not prevent European films from travelling across borders. Improving portability and enforcement of rights in the digital era should be the priority of any EU action in this field.

>> Developing and educating audiences

24. The promotion of **Media Literacy** is an important element in the AVMS Directive. Audiovisual and interactive media plays a crucial role in the development of human identities as well as cultural affiliation and understanding at least to the same level as literature and printed media. **Media literacy is at the heart of cultural and educational policy making in the 21st century.** It emphasizes the importance of audiovisual media as a tool for reflection and critical understanding. It is an integrated part of the effort to build a digital environment for European citizens and support for it should be maintained and strengthened.

The EFADs

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 year[2] with a view to fostering the creation, production, promotion, distribution and exhibition of European audio-visual and cinematographic works.

[2] 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)."