



A Europe Plan That Would 'Destroy' Independent Film

A proposed change in copyright law to eliminate territories would be the 'death knell' of the continent's up to 28 foreign presales, a necessary part of any film's budget **By Scott Roxborough**

A NEW PROPOSAL BY THE European Commission to change European copyright law could — if its critics are to be believed — wreak havoc on the independent film business, both in Europe and Hollywood. “If it goes through, it would literally destroy the business,” says David Garrett of London-based sales outfit Mister Smith Entertainment, which handles DreamWorks titles across Europe. “That’s no exaggeration. It would be the death knell.”

At issue are plans, proposed by European Commission president Jean-Claude Juncker, to break down what he calls the “national silos” in copyright legislation by getting rid of territorial exclusivity. At the moment, any film or TV series, whether European or American, is licensed separately to all 28 countries in the European Union. When Lionsgate sold *The Hunger Games* to Europe, for example, it kept the franchise for the U.K., where it has its own distribution operation, but did separate territorial deals with distributors

such as StudioCanal in Germany and France’s Metropolitan. This territory-by-territory licensing is the rule in Europe and is how most independent films get financed. Depending on the movie, preselling a film in Europe can account for 30 percent to 60 percent of a film’s budget. Such European directors as Lars von Trier, Mike Leigh and Pedro Almodovar rely on presales to territories to get films made.

But Juncker’s plans to create a digital single market in Europe, something he outlined when he took over as European Commission president in November, could put an end to that, replacing national,

territorial copyright with a single, pan-European copyright. The proposal, which will be officially tabled by the Commission in May, is intended to “ensure that customers can access services, music, movies and sports events ... wherever they are in Europe and regardless of borders.”

The idea has obvious appeal among European consumers. A European Commission spokeswoman cites a survey from 2011 that found one in five EU citizens was interested in receiving content from other EU countries and 27 percent wanted to watch content from home while abroad. “Europeans do not understand why they cannot access content they have paid for when they travel abroad,” she says. “In the same way, they cannot understand why they cannot access content they are willing to pay for.” British Business Secretary Vince Cable has argued that creating a digital single market in Europe could add \$370 billion to the continent’s economy by making it easier to sell content across borders.

“It’s absurd,” counters Martin Moszkowicz, head of film and TV at German production giant Constantin Film, of the idea of a single pan-European copyright. He notes Constantin titles such as the Hitler drama *Downfall* or Tom Tykwer’s *Perfume: The Story of a Murderer*, each of which grossed more than \$100 million worldwide, would have been “practically impossible” to finance without territory-by-territory licensing. “If you had a single, pan-European license, who buys it? Only the studios would be in a position to buy for all of Europe, and even they don’t want to do it,” he says, noting that the majors typically

sublicense their films in smaller European territories where they lack distribution operations.

Stan McCoy, Motion Picture Association president and managing director for Europe, the Middle East and Africa, argues that trashing territorial copyright would transfer value “from the creative community to the online platforms” that distribute films and TV series in Europe. “It would be a case of buy one [European] territory, get 27 free,” he says.

“If you take away territorial exclusivity, you hand over the ability to distribute to a tiny handful of multinational companies that are not curating for a local audience and aren’t interested in doing so,” says Jean Prewitt, CEO/president of the Independent Film and Television Alliance. “It will push everyone to produce content that appeals across borders, which would inevitably be English-language films with the broadest appeal produced by multinationals. That flies in the face of how the independent industry operates.”

The industry on both sides of the Atlantic is fighting the changes. In a letter to London’s *Daily Telegraph* on Feb. 26, the heads of six trade groups warned the British government that its support of Juncker’s plan puts the film industry “under threat.” Germany’s cultural minister has said she’ll fight to prevent the proposal from becoming law.

National parliaments will debate the issue and shape legislation, which would be voted on by the European Parliament in 2016 or 2017. Before that happens, the industry hopes to kill it. “Most people haven’t been paying attention; they think it just can’t happen,” says Garrett. “But it’s very much on the radar now.” **THR**



Garrett

How Territorial Presales Helped 4 European Movies Get Made

	<i>Amour</i> (2012)	<i>Carnage</i> (2011)	<i>Kon-Tiki</i> (2012)	<i>A Royal Affair</i> (2012)
	BUDGET \$8.5M	BUDGET \$19M	BUDGET \$12.6M	BUDGET \$6.7M
	PRESALES \$2.7M, 31.8%	PRESALES \$12.5M, 66%	PRESALES \$4.7M, 37.5%	PRESALES \$2.5M, 37%
	PRODUCERS/PRIVATE INVESTORS \$2.97M, 34.85%	PRODUCERS/PRIVATE INVESTORS \$1.1M, 6%	PRODUCERS/PRIVATE INVESTORS \$4.2M, 33%	PRODUCERS/PRIVATE INVESTORS \$1.5M, 23%
	SUBSIDIES \$2.8M, 33.35%	SUBSIDIES \$5.3M, 28%	SUBSIDIES \$3.7M, 29.5%	SUBSIDIES \$2.68M, 40%