

ONLINE BROADCASTING DIRECTIVE:
JOINT STATEMENT FROM THE
AUDIOVISUAL AND SPORT SECTORS

18 December, 2018



We take note of the political agreement reached by the European Institutions on the Online Broadcasting Directive. We welcome the recognition by the European Parliament and the Council of the importance of territorial exclusivity to the audiovisual sector in Europe and acknowledge their efforts to re-balance the original proposal which threatened our ability to create, finance and produce audiovisual content. With the limitations introduced in the final compromise, the European co-legislators have introduced a once-off exception to territorially exclusive distribution arrangements and the territoriality of copyright. These principles constitute crucial building blocks for a vibrant and diverse European audiovisual sector by promoting private sector creative and financial risk-taking and entrepreneurship. A strong signal has been sent to the European Commission to refrain from further initiatives which erode territorial exclusivity.

Nevertheless, we remain deeply concerned that even the limited introduction of the Country of Origin principle for the licensing of rights in certain programmes in broadcasters' ancillary online services in the Online Broadcasting Directive will adversely affect the complex eco-system of our sectors. This would endanger cultural and linguistic diversity, plurality of content and business models, as well as competitiveness in the future audiovisual landscape in Europe. We understand the definition of 'ancillary' services is still subject to final agreement and urge the European Institutions to define 'ancillary' services in the narrowest possible manner.

We will therefore continue to defend the principles of commercial and contractual freedom to agree territorial exclusivity and territoriality of copyright thus safeguarding maximum private sector investment in the development, creation, production and distribution of original EU content. This is essential if European citizens are to continue to enjoy a diverse offer both in terms of audiovisual content and distribution options, and it will become even more strategic in the coming years as internet speeds and mobile broadband penetration increase across the Europe markets.

Note to Editor:

Territorial exclusivity is the foundation of the European film and television sector's financing and distribution model. This licensing practice generates the financing for most production, enables investors to recoup their contribution to development, creation, production, marketing and distribution costs, and provides seed capital for future productions. Online rights in a film or television programme cannot be severed from the other distribution rights and/or sold differently. Releasing audiovisual content online without territorial exclusivity undermines the value of distribution rights in other territories, thus cutting off an important financial contribution to production budgets. In addition, the overall cost of acquiring distribution rights for any one territory is often amortised across different distribution channels (cinema/physical carriers/online/television) - splitting the different distribution rights by applying different legal regimes to different types of rights will therefore fundamentally unsettle both the financing and the distribution of audiovisual content. The Country-of-Origin approach therefore does not reflect the economic realities of European audiovisual content creation, financing, production and distribution. On the contrary, eroding the principle of territorial exclusivity threatens the virtuous circle of investment in culturally and linguistically diverse creative content, highly skilled jobs and a wide choice of distribution channels in each Member State.

"We believe that independent producers will be the first to suffer from adverse effects of the new provisions. The safeguards are not strong enough to guarantee European creativity in the complex ecosystem of creation, financing and production of audiovisual content." **Marco Chimenz, President, EPC – European Producers Club.**

"Distribution of audiovisual content is by nature based on territorial exclusivity, which provides the distributor with the possibility of recoupment on each investment in this high-risk market. Any future legislative initiatives should be properly impact-assessed to ensure that there is no collateral damage to the audiovisual ecosystem." **Victor Hadida, President, FIAD – International Federation of Film Distributors' Associations.**

"Producers of films and audiovisual content are united in the fight to preserve territorial exclusivity and to increase the European institutions' understanding of why territorial exclusivity is crucial for the value of rights in the audiovisual sector. Our ability to license rights on a territorial basis is our currency and the future of our production companies depends on our capacity to build IP capital through rights and catalogue. This is the only way to secure cultural and linguistic diversity in the high-quality audiovisual content produced and distributed in Europe." **Börje Hansson, Vice-President Europe, FIAPF – International Federation of Film Producers Associations.**

"Independent producers rely on their ability to control how and when their films and programs are exploited as the foundation of financing, producing and generating value from their creative work. Our community strives to produce diverse creative works for European consumers to enjoy on a wide variety of platforms. The new Directive – in contrast to the original proposals – recognizes that these exclusive rights must be preserved, with only defined, limited exceptions for broadcasters' ancillary online services." **Jean Prewitt, President and CEO, IFTA – Independent Film & Television Alliance.**

"Territorial exclusivity is key for video publishers to secure financial value when they acquire video publishing rights for audiovisual content whether on physical media or online. Video publishers will immediately lose the incentive to acquire rights where the very same content has already been made accessible online across borders. Our business is to create awareness of and markets for both national and non-national audiovisual content. Our financial risk-taking is underpinned by territorial exclusivity which enables us to promote cultural and linguistic diversity in the content published and to offer the broadest possible range of access options to our audiences." **Gianmaria Donà Dalle Rose, President, IVF – International Video Federation.**

"Territorial exclusivity is a key element to deliver tailored offerings to sports fans in the different European countries. We are very worried about any attempt to weaken this principle. We are therefore deeply concerned by the conclusions of the last trilogue which seem to apply country of origin for sport radio programmes. Both the European Parliament opinion and the European Council position excluded sport content entirely from the scope of the Initiative. For consistency and transparency reasons, we are confident that this mistake will be corrected in the final drafting of the now Directive". **Mathieu Moreuil, Director of International Relations and EU Affairs - Premier League**

"I firmly believe in the value of independent cinema and tv for the functioning of democracy that, in my view, could not exist without the principle of territoriality. Therefore, I would like to thank the European Parliament for its strong support in the past two years of intense debates". **Alfred Holighaus, President - SPIO.**

Signatories

ACT - Association of Commercial Television in Europe, Grégoire Polad, Director General - gp@acte.be

ANICA - Italian Film and Audiovisual Industries Association, Francesco Rutelli, President - presidenza@anica.it

BUNDESLIGA - Stefan Brost, Head of EU Office - stefan.brost@dfb-dfl.de

CEPI - European Coordination of Independent Producers, Elena Lai, Secretary General - Cepi@europe-analytica.com

EUROPA DISTRIBUTION - European Network of Independent Film Distributors, Christine Eloy, Managing Director - christine.elay@europa-distribution.org

EPC – European Producers Club, Alexandra Lebret, Managing Director - alexandra@europeanproducersclub.org

FEDICINE - Federación de Distribuidores Cinematográficos (Federation of Spanish Cinema Film Distributors), Estela Artacho García-Moreno, President & Managing Director - estela_artacho@fedicine.com

FIAD - International Federation of Film Distributors Associations, Nikolas Moschakis, Secretary General - nikolas.moschakis@fiad.eu

FIAPF - International Federation of Film Producers Associations – YBP, Benoît Ginisty, Managing Director to FIAPF Headquarters - B.Ginisty@fiapf.org

IFTA - Independent Film & Television Alliance, Jean Prewitt, CEO - jprewitt@ifta-online.org

IVF - International Video Federation - Publishers of Audiovisual Content on Digital Media and Online, Charlotte Lund Thomsen, Legal Counsel - clthomsen@ivf-video.org

LALIGA - The Spanish Football League
Javier Tebas, President - contact: Laura Vilches - lvilches@laliga.es

MEDIAPRO - Jaume Roures, Legal Representative
Mediaproducción S.L.U., jroures@mediapro.es

MPA - Motion Picture Association, Stan McCoy, President and Managing Director MPA EMEA - Stan_McCoy@mpaa.org

PREMIER LEAGUE - Mathieu Moreuil, Head of European Public Policy - mmoreuil@premierleague.com

SPIO - Spitzenorganisation der Filmwirtschaft (Association of the German Film Industry), Alfred Holighaus, President - holighaus@spio.de

UNIC - International Union of Cinemas, Laura Houlgatte, CEO - lhoulgatte@unic-cinemas.org

VAUNET - Verband Privater Medien e.V. (German Media Association), Julia Maier-Hauff, Ressortleiterin Europarecht - MaierHauff@vau.net