



UK Coalition for Cultural Diversity

Observations on the application of a Digital Single Market principle to the cultural and audiovisual sector

1 The EU Commission priority is for the achievement of the Digital Single Market which would allow consumers to access goods and services across borders without hindrance. The concept of a Digital Single Market is logical not least since it is estimated that it will contribute a minimum 4% increase of EU GDP (European Policy Centre). It also promises the reform of complex national and regional regulations into a universal pass in the interests of maximizing trade and financial return.

However there is not a single solution for many policy areas. Whilst measures to improve access to and the promotion of European works for audiences should be explored these should not hinder the financing and exploitation of works. Completing the Digital Single Market should benefit citizens and consumers (the demand side) but not to the detriment of creation (the supply side).

The priority of EU action should be the establishment of a level playing field, not currently the case, and to ensure equal treatment between all operators, a commitment to economic sustainability and the creation of local works.

2 The interests and objectives of the creative industry sector are distinctive and the business models of particular cultural sectors are not the same. What might work for the music industry, does not work for the audiovisual sector where production costs are much higher and the producer seeks investment for pre-financing of a film usually on a territorial basis in return for the exercise of exclusive rights.

There is also great disparity between the production capacity and audience demographics in different EU countries so that territorial licensing of rights is a key condition for sustainable investments in the sector and efficient distribution of works to local audiences, thereby ensuring cultural and linguistic diversity is supported.

Thus, in order to sustain local, original production across the countries of the EU, the EU has needed to maintain both national and regional systems of subsidy and regulation and this necessity will continue.

3 Regulations obtaining to the EU audiovisual sector are contained in the Audiovisual Media Services Directive, AVMS. This directive was drawn up and has evolved in recognition of obligations under clause 134 of the EU Treaty, the UNESCO Convention 2005, and The European Charter of Human Rights amongst other regional and international agreements. In particular it is

designed to safeguard cultural diversity, cultural rights, jobs and growth in a key sector of the economy and life of Europeans.

The AVMS has been updated progressively to ensure the purpose of regulations continues to be fulfilled, and in particular to reflect the new business models of the digital marketplace. Certain new Internet players are providing audiovisual goods/services and are not covered by the existing AVMS provisions. This must be addressed if there is to be continuing investment in national/European audiovisual production carried online. The current challenge is also to reexamine portability and cross border access which needs to take account of the aims of this directive and in particular article 13 which provides for the promotion and distribution of European works where relevant internet players need to be included in respect of making a contribution to sustaining local AV production and being in fair competition with other audiovisual players now subject to the Directive.

4 EU regulation for European audiovisual production is based on premises which remain relevant even when creation and usage practices are changing in the digital era

- To promote and protect the cultural and linguistic diversity of the 28 nation states of the European Union requires both regulation and financial support at both national and regional level
- Cultural goods and services are not like those in other economic sectors. They are conveyors of values, meaning and identity as defined in the 2005 UNESCO Convention
- Cultural goods are subject to the requirements of sustaining cultural and linguistic diversity and are invariably created, broadcast, distributed or exhibited on a local, regional and national basis.
- In Europe, the audiovisual market is not a level playing field. Companies of the United States still have a very dominant share in all European countries– in the majority of states around a 70 – 90% share in the theatrical distribution and exhibition marketplace, with the notable exception of France.

5 The financing models to encourage investment in the production of original film and TV content are complex. Effectively creators must pre-license their content to distributors, exhibitors and investors to offset the costs of production. These pre-sales financing systems rely on the licensing of content on a country-by-country basis across Europe and have evolved successfully so that creators can make a return on their investment in the manner appropriate to their production.

Mandatory cross-border access to audiovisual content could potentially undermine investment and lead to homogenization as the ability to take risks on innovative new concepts and stories is diminished due to lack of up-front finance. This would run counter to EU obligations to uphold cultural and linguistic diversity.

6 The EU Commission is considering measures to reform copyright. A high level of protection of copyright remains essential. Portability and cross border subscriptions will not be delivered by weakening copyright.

The right to remuneration of creators both in the linear and online environment must be fully recognized and their interests balanced fairly with those of the copyright holder who often exercise more influence on law makers than authors.

Effective measures to fight against counterfeiting of audiovisual, cinematographic, music and literary works remain essential in sustaining the creator and the producer. Growth will be hampered unless Member States investigate and prioritise ways to identify and take down services which carry infringing or stolen works. Action bringing all relevant stakeholders together as in the EU Commission's "Follow The Money" initiative should be emulated more widely in a bid to disrupt the business models of sites carrying infringing content. Support must be given to the EU Action Plan on the protection of IP. Meanwhile effective promotion of existing legal online offers across Europe, and support for the extension of these services, is essential.

7 IP rights are not human rights although they can be considered a civil right for creators. However it is important to look at labour laws to protect artistic activity - the ability to earn a livelihood, the protection of integrity, the right to attribution and statutory licensing are all important to the long-term growth of the creative sector.

8 EU single market rules can have an impact on jobs, growth, and cultural and linguistic diversity particularly where creative goods and creative workers are concerned.

The development of the Internet has demonstrated that it cannot be seen as a neutral space for the benefit of all and the promotion of the greatest diversity of works to the greatest diversity of users. Certain large internet companies dominate the search, aggregation and distribution market whose financial objective of maximum return with neither significant investment in creative content nor fair remuneration of creators leads to competitive practices which without regulation do not promote the interest of creators or diversity.

In the objective to reconcile artists rights with users' expectations it is important to strengthen the power of creators through strengthening the collective bargaining power of trades unions and collecting societies who can represent and understand their interests. Other means to rebalance the Internet value chain in favour of creators should be urgently examined.

There needs to be provision for the redistribution of gains so that the author gets fair remuneration for his/her work online.

9 If there were a revision of the AVMS directive, it would be necessary to end the practices of certain Internet corporations which are able to bypass the obligations in the AVMS directive in some countries for the financing, promotion and distribution of European creation where audiovisual works are

concerned. In order to apply the country-of-destination principle to the large Internet players to prevent them circumventing national rules and obligations regulation will be essential. This will also enable a fair and proportionate contribution to the creation of new content by the relevant Internet companies who provide audiovisual works and who are benefiting from the distribution of audiovisual content. This will ensure a virtuous circle of investment and increased production in new and existing audiovisual works to the benefit of industry, creators and citizen/consumers alike.

Also in this context and in order to guarantee equal digital citizenship, special attention must be made to ensuring that public service broadcasting has a prominent place and funding in the world of connected television.

10 Where the Transatlantic Trade and Investment Partnership, TTIP, is concerned the EU Commission negotiating mandate provides for the exclusion of audiovisual services. This must apply in both the linear and online world. The new EU Commission must strictly fulfill its mandate and ensure that digital AV services cannot be liberalised in these agreements, as it would prohibit Member States from taking measures to promote European creative works on digital media.

The Commission must also ensure that back door commitments in other fields such as online services or telecoms do not circumvent exclusion of audiovisual services, especially digital audiovisual services; for example by the use of the words “digital products” which should not be understood to include audiovisual programming/works or other creative works.

Beyond the support for the audiovisual/cinema sector, we must ensure that cultural policies at all levels of government cannot be challenged in the context of trade negotiations so as to ensure the protection and promotion of cultural diversity.

11 Cultural goods can benefit from low taxes, whether distributed on a traditional or digital media platform. This is not the case today. Consideration should be given to this in any changes to existing regulations.

12 All proposed EU measures on the DSM should be subject to impact assessment studies to ensure their positive effect on diversity of expressions, fair remuneration, job creation and cultural rights.