

## **European Coalitions for Cultural Diversity**

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### **Opinion on revision of the AVMS directive**

In our press release on the revision of the AVMS directive, dated 25 May 2016, we expressed a wish: “Getting a new deal for culture and its creators in the digital age must become a priority of European policy”. Indeed, we believe a new EU approach towards culture is crucial, especially at a time when citizens are turning away from the European project and populist and nationalist sentiment is growing everywhere. There are lessons to be learned after the referendum in the UK. The EU must re-think its agenda and ensure that culture is central to its policy agenda. Above all Europeans must be able to watch each other on screens big and small. This is essential if we are to build mutual understanding and a strong underpinning to our European democracy both at national and European level.

In particular, the screen, big and small, is the most powerful influencer of our democracy and culture. This is no technocratic matter: it is key to sustaining our inclusive, pluralist European values as enshrined in the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, but, above all, to the development of our European citizens. This directive is also potentially a critical engine for the success of our creators and our creative industries.

The ECCD therefore welcome the European Commission's proposal of revision of the AVMS directive, which attempts to both reinforce the promotion of European works on all online audio-visual platforms and to go some way to restoring a fair and level playing field between video-on-demand providers and broadcasters, to the benefit of creators and cultural diversity.

The ECCD now encourages the European Parliament and the Council to, not just agree with, but also significantly reinforce, these positive first orientations.

For instance, the ECCD believe it is still essential to clarify certain concepts and definitions of the AVMS Directive, to take into account recent technological developments, and to extend some of its provisions to most services providers offering audio-visual works (such as community platforms, managers of application stores, manufacturers of connected devices...).

Yet, we wish to insist more particularly on the new Article 13 which refers to the audio-visual content of SVoD and VoD services. This article is key to achieve meaningful cultural diversity online and for achieving equality between linear and non-linear audio-visual services.

#### Quotas:

The directive states that audiovisual media service providers must at least secure a 20% share of European works in their catalogues and ensure the prominence of such works.

The real question is to know whether the Directive will *de facto* create more equality between Internet giants like Netflix, Amazon, Youtube or Google, which have used their multiple geographical locations to take advantage of

European tax regulations loopholes, and providers already established in European countries, which pay their taxes and contribute to the creation of local film/programme funding mechanisms.

Yet, the minimum threshold of 20% of European works in catalogues seems very low. A study by the European Audiovisual Observatory <sup>1</sup> shows that the European average is 27% for transactional VoD services and 30% for SVoD services. The inclusion of European works averages 23% for iTunes and 22% for Netflix. By setting the threshold at 20%, the Directive would effectively allow these services to lower their percentage of EU audiovisual works when their corporate turnover far exceeds that of individual EU broadcasting organizations with whom they are in direct competition. Also, it is worth recalling that TV broadcasters have to reserve a majority share of their transmission time (so more than 50 %) for European works, as stated in Article 16 of the directive. While they have to directly compete for advertising revenues with VoD platforms, they have to comply with much more stringent rules than them. It is therefore important to restore a more fair level playing field.

### **Recommendation**

**In our view such platforms should be asked for a minimum threshold of 30% of national / European works in their catalogue, which could be increased to 40 %, three years after the implementation of the directive.**

### Prominence:

A minimum threshold of European works goes hand in hand with the obligation to promote their visibility and access so that they do not end up in back catalogues. We

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<sup>1</sup> [“European films make up a third of all films available on VOD in Europe”](#), European Audiovisual Observatory, 20/04/2016

therefore welcome the reference to this obligation in the text. Yet, it is quite vague and can therefore easily be circumvented.

### **Recommendation**

**It would be useful to insert the following words: "ensure prominence of these works, notably by ensuring a clear presence on the homepage, and targeted recommendations or the possibility for users to specifically search for European works". As recitals could demonstrate, the latter could be ensured either through a classification by origin or through searching by key words.**

### Investment obligations:

We warmly welcome Article 13.2 since, if properly implemented, it prevents online services from circumventing national investment obligations designed to ensure a virtuous circle of investment in a diversity of audiovisual films/programmes online.

Indeed, the ECCD have argued for a long time that the principle of the country of origin applied to Article 13 meant that VoD providers could settle in countries with the least stringent rules regarding the promotion of European works. This has therefore proved detrimental to countries with more ambitious and protective rules for investment in the creation of local film, drama and documentary.

So such a change is much needed. We should once again recall that the production and circulation of local film, drama and documentary are key to our democracy, culture and social cohesion.

## Derogations:

Article 13.5 provides for derogations from obligations under Articles 1 and 2 (small and micro enterprises, low turnover and low audience).

Some services could be defined as "thematic" to circumvent the requirements of paragraphs 1 and 2. This is obvious. For instance, in Italy, the regulator AGCOM has granted exemptions to Disney Channel, Fox Kids, Nickelodeon saying they are thematic channels. Yet, these channels could be encouraged to carry and invest in more local programming. This is particularly important where children's programming that affects young hearts and minds is concerned. As they develop their identity, children, in particular, have a right to learn about and understand their own culture.

## **Recommendation**

**The exemptions for thematic services and lower revenues should be specified. The exemption of low revenue services is acceptable provided that the revenue is known and fixed beforehand.**

Finally, the ECCD would like to recall that women's films are unfortunately relatively invisible and need far more support, particularly in the converged, online environment, as underlined in a recent report by EWA on gender equality<sup>2</sup>.

The recitals should therefore allude to the report and the recommendations it made, particularly on the importance of AVMS policy to enhance EU's wider commitment to

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<sup>2</sup> ["Where are the women directors in European films? Gender equality report on female directors \(2006-2013\) with best practice and policy recommendations"](#), European Women's Audiovisual network

gender equality and the need for measures at EU level to address the problem. The directive itself could possibly include a proposal that EU institutions monitor films according to the gender of the director so that progress towards greater gender equality can be monitored.