

Cultural Policy: The Lessons from Europe

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Thank you for this timely invitation at this crucial moment where positive public policy is required to ensure the digital distribution of diverse film and TV programs that reflect the many stories from our individual societies. In this way we can ensure that cultural diversity, one of our core values, is protected and promoted.

My thanks to Peter Grant. I have had the pleasure to have worked with Peter now for nearly 20 years on cultural diversity issues. You are lucky to have him supporting sound broadcasting regulation in Canada which underpins your creative industries and your culture.

I am honoured to chair the Network of European Coalitions for Cultural Diversity (ECCD). This was created in 2005 by National Coalitions for Cultural Diversity to promote the signing and ratification of the 2005 UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*.

This alliance, composed today of 14 European national coalitions, is struggling to ensure that culture is not considered a commodity like the others, especially in the context of trade negotiations. We have, for example, called for the exclusion of audiovisual works from trade agreements, particularly the one the EU was negotiating with the US prior to Trump. The recently adopted EU-Canada trade agreement excludes film and television as demanded by both cultural industries. Such an exclusion preserves the right of nation states to subsidise public service broadcasting and have special measures to support film production, for example.

From our point of view, the integration of culture and cultural diversity into European policies is paramount. Culture cannot be assessed solely from the point of view of competition, trade and internal market policies. On the contrary, cultural creation expresses values, helps to shape our identities and can create social cohesion and mutual understanding between citizens. It is a pillar of our democracy.

A Word about Britain

I come from a country that just voted for Brexit, it is a country where half the population either clearly did not feel part of the rest of Europe and/or wanted to kick the elites.

The creative community voted over 96% to stay in EU. The cultural/creative community hate Brexit for a number of reasons because it :

- i) will hamper the free movement of all cultural professionals
- ii) cut us off from EU cultural support funds
- iii) lose actual and potential cultural partnerships with our European friends
- iv) may see barriers to trade in audiovisual between UK and rest of EU
- v) will mean a loss of diversity of expression and a sharing in common European values

(vi) will mean an estimated 27,000 job losses in the creative industries in London alone

Just a little more on the picture in the UK...

The British Film Institute only has a budget of £48 million as opposed to the French equivalent which has € 785 million in 2016 to spend on audiovisual subsidies.

UK governments don't demand sufficient investment in local audiovisual production from the television channels and over-the-top (OTT) players on our territory, unlike other EU countries. They seem to be content to have 2,000 channels registered in Britain and yet feel unable to make investment demands of them.

UK governments seem to believe it is only necessary and sufficient that BBC, ITV, Channel Four and Five have clear investment obligations in local content. This is despite the EU audiovisual media services directive (legislation) that advocates that Member States ensure that over 50% of programming, excluding sports, news and information, comes from local production.

Policy makers are failing to see that VOD/OTT is undermining that model. BBC Director General Tony Hall recently estimated a £500m programming shortfall if nothing is done. Here is actually what he said on this....

"We know that Netflix were reported to have spent as much as £100 million on The Crown. That's equivalent, by the way, to well over a dozen drama series on the BBC - from Sherlock and Happy Valley to Poldark and Line of Duty.

Now, I think what Amazon and Netflix are offering consumers is good and impressive. And they're offering producers here some fantastic opportunities too. But the reality is that their investment decisions are increasingly likely to focus on a narrow range of very expensive, very high-end content - big bankers that they can rely on to have international appeal and attract large, global audiences.

Even the most generous calculations suggest they are barely likely to make up half of the £500 million gap in British content over the decade ahead. And a more realistic forecast points to them contributing substantially less."

Clear figures on Netflix are very hard to come by and here are some I have been able to dig out for you.

At the end of 2016, Netflix had as many international subscribers as US subscribers. In Europe, the UK has the most subscribers with 8 million ! The service is also well established in other EU countries such as Sweden, Belgium and France. In France, Netflix is far ahead of the Canal Plus SVOD service, which is, as you know, is the TV Channel that invests the most in French AV creation namely at least €200 million per annum.

In January 2017, UK productions are the most important in the Netflix catalogue after US productions. But still, they only represents 5 500 hours of the catalogue (1/5) compared to the 30 000 hours of US content.

Netflix co-founder Reed Hastings revealed that Netflix has spent more than \$1.75bn on European-made productions, including originals, licensed shows and co-productions, since 2012. This is minor. In Germany for example - where by the way the first German Netflix series has been released recently ("Dark")-, there are 186 distinct German movies and TV seasons which

are local on Netflix in September 2017, which represents 6,4% of the overall catalogue. To give you an idea of the under representation of German and EU content in Netflix's catalogue, the German SVOD provider Maxdome has 2 062 distinct Movies and TV seasons which are local, which represents 41,22% of the overall catalogue.

In a soon-to-be published European study covering 2015/2016, Netflix invested in 7 titles in mainly the UK/France. This constituted approximately 1.5% of total fiction titles in EU and 0.6% of total fiction hours in EU. It was lower than the 2.2% of EU audio-visual revenues they received.

Add to this that when asked recently, 48% of UK 12 – 15 yr olds say they would miss YouTube and 20% say they would miss Netflix and they didn't even mention another content provider ! They do however say that there are not enough programmes from their own region seemingly unaware that Netflix and YouTube are not going to provide those local programmes. Only the public service broadcasters are doing that.

We are very integrated with US audiovisual investment, ambitions and owners. We are not doing enough to defend out cultural interests in my opinion and I fear we will not adequately address the funding shortfall BBC Director General Hall mentions.

Instead we tinker at the edges. There is now £60 million from the BBC which will be put out to tender for the production of children's programmes. This is known as "top slicing". But of course this is no long term answer to the lack of sufficient investment in local children's programming by all the relevant players.

Sadly any hope of the UK government imposing a levy on new internet players to be reinvested in local programs and films is a far-away hope for the moment. The UKCCD will be lobbying on this in 2018.

The Digital Single EU Market

Currently, a number of important legislative measures for the sector are under discussion at the European Union level. The importance and the urgency of these reforms are explained by a change in the sector since the arrival of the new actors of the Internet and video on demand.

To give you some background:

1. According to a study carried out by Roland Berger in 2015, the total value of the European market for online platforms is estimated at 22 billion euros. 23% of this value, on average, comes directly from the exploitation of cultural content made by others.
2. For "You Tube", 66% of its value is directly related to the use of cultural content made by others.
3. The on-demand video market is expanding: This market is increasing by €1 billion per year.

Revenues for subscription and over-the-top VOD services, such as Netflix increased from \$40 million in 2011 to \$1.7 billion in 2015 and is estimated to be \$34.6 billion in 2021.

Indeed, subscription and over the top VOD and other VOD (like catch-up) services have an increasingly important impact on the traditional television market. They attract audiences,

sales and rentals and are becoming ever more profitable.

Subscription/OTT VOD services have the particularity of being also in the markets for the acquisition, production and ordering of content, as is the case with Netflix. This impacts the entire value chain of content production, increasing production costs and competition for exclusive licenses.

The commercial budgets of commercial television are also increasingly encroached upon by the Tech players, while public and commercial television station revenues are stagnating. Remember the BBC's Director General's projection of the potential loss of £500m from the UK programme budget over the next few years.

Another form of competition is emerging with the Internet's new players. In an Internet economy (Google, Apple, Facebook and Amazon - otherwise known in Europe as the "GAFAs" - not creators) receive \$50 billion from cultural content according to Jonathan Taplins in his recent book: "Move Fast And Break Things". In addition, as platforms such as Amazon and Netflix compete directly with other platforms, they are not being asked to play by the same rules of investment and broadcast. I know that you usually refer to these companies as "FANG": Facebook, Amazon, Netflix and Google. This is a good acronym because it includes Netflix.

In contrast to FANG, for example, the BBC, the German ZDF or Italian RAI through to Canal Plus or Britain's ITV invest in, promote and broadcast more than 51% of their airtime on local programs and films. Canal Plus does this to the tune of 200m euros a year.

So in the EU the question European parliamentarians are asking alongside their film makers is: Surely it is legitimate to include VOD in EU legislation on film and TV. Also many are asking: How in this climate of competition how can we ensure the future of our funding model for European films in order to increase cultural diversity on our screens?

Put simply by Peter Dinges, Head of the German Film Fund: "If they wish to have access to our market, then they should invest in our market."

The Head of the French CNC, Christophe Tardieu said at our recent European Coalitions conference in Brussels that the new players must play by our rules, be obliged to invest in our production and must not be allowed to abuse any dominant position in the market.

What Role for EU Institutions?

There are currently three major reforms under discussion, all proposed by the EU Commission:

1. Directive on audiovisual media services (AVMS)

This law will define the future of the audiovisual industry, both online and offline and all those who work there.

The European institutions have the power to adopt rules that can ensure a fairer Internet world and that will require VOD platforms to participate equitably in the investment and promotion of European films and programs.

The European Coalitions are campaigning to ensure that all video-on-demand and over-the-top platforms offer a minimum of European films and programmes in their catalogue (30% / 40%). It's likely that a quota of 30% will finally be adopted, probably in early summer this year.

We are also campaigning to ensure that these European audiovisual works are sufficiently highlighted and that they can be quickly found for the viewer. A provision will also be adopted in this regard.

The draft directive proposes to allow Member States to impose a financial contribution based on the on-demand revenues of an operator in the Member State in which it is established.

We also want to ensure that EU Member States can go further, such as France, Poland, Germany and others, and can impose a levy on demand-driven platforms to invest more in local production, even in cases where one service is beaming from one Member state to another Member state.

In Germany, the law stipulates that on-demand services established on German territory or outside Germany are obliged to pay approximately 3% of their revenue to the German Film Fund FFA.

Our aim is to ensure that this so-called AVMS directive provides support to national policies so that they can guarantee increased production and showing of diverse national films and that European co-productions continue to exist. This reflects in my view the principles of the 2005 UNESCO Convention.

In this regard, successive UK governments have failed to make sufficient investment demands of cable/satellite channels like SKY. They should have been obliged to invest a proportion of revenues in local production. They do invest and do carry some European productions but it is impossible to discern what this represents as a proportion of revenues and broadcast time.

2. Geoblocking and territoriality

The mantra of “ we want everything everywhere NOW” has seen some Members of the European Parliament (MEPs) demand that all films be available immediately and on all platforms for the consumer.

Audiovisual creators with a number of other parliamentarians, including our coalitions for cultural diversity, have taken months explaining that such a demand would crash the EU film-funding model. We have thus so far prevented the inclusion of the audiovisual sector in an EU law (soon to be adopted) that would allow access to all goods and services immediately online to all consumers.

It is about protecting our European film-financing model, which guarantees producers exclusive rights in a given territory so that they can raise enough money to finance their films.

3. Copyright Directive

The ECCD continues to say loud and clear to MEPs/European parliamentarians and EU officials that a high level of copyright protection is essential to reward creativity and stimulate

investment in creative content and distribution. It is only if authors, performers and producers have adequate remuneration that European cultural diversity will continue to develop.

(A) Many believe that the European Commission's proposals do not go far enough to ensure fair remuneration for creators. Audiovisual authors, performing artists and other creative workers, for example, are demanding that there be wording in the directive that they should enjoy “an unwaivable right to equitable remuneration for the online exploitation of their work” to be paid for by the relevant platforms.

Trade unions representing those behind stage and screen and also performers want the directive to guarantee them a better bargaining position vis-à-vis their employers when contracts are being signed. It is hard to say whether these demands will be met. There is much pushback by platforms and producers.

(B) We welcome the European Commission's assessment in the draft directive of the difference in value between the income of those who create, own and invest in cultural and creative content and the revenues that go to the large US platforms. This is the so-called “value gap”. The draft law, as amended by certain European Parliament committees, is demanding that “digital content platform providers shall enter into a fair licensing agreement with any requesting rightsholder.” Measures, such as the use of effective content recognition technologies, shall be appropriate and proportionate. Again, these ideas are hotly contested and the outcome remains to be seen.

(C) On the publishers’ right, the Coalitions do not have a position, but the European Commission is determined that this right will become a reality in this copyright directive and the publisher’s hand will be strengthened in negotiating licensing deals with the platforms.

Again the vote is likely to be this summer and will set a very interesting precedent on copyright reform and tackling the enormous power of certain platforms.

4. EU MEDIA Program

This program supports training, development, production, distribution and exhibition of European film. We welcome the European Commission's efforts on the MEDIA program, in particular through the introduction of a guarantee fund, as well as other support for the diversity of film and its dissemination. UK films like *Shumdog Millionaire* and *The King’s Speech* for example each received close on €1 million distribution support from this fund to ensure they reached European audiences.

The fund supports 1500 screens across the EU which must carry over 50% non national European film to receive a subsidy.

At the ECCD Conference on January 24, 2018, Mariya Gabriel, European Commissioner for Digital Economy and Society, pledged her unequivocal support for the program and possibly even increased funding.

5. Piracy

The Coalitions call upon the Member States to make more resources available for anti piracy initiatives.

Currently, the Commission's copyright proposals are still below the level of regulation and support required.

Thus, the following measures should be considered where illegal content is concerned:

- a) change the liability regime for platforms
- b) improve procedures for the closure of pirate sites
- c) oblige the platforms and social media to withdraw illegal content that has been uploaded by their users.

The French CNC has put in place a system where any user can make two clicks only and reach over 5000 films legally. This is also an effective way of removing the incentive to pirate films.

Conclusion

Despite all these stakes and the blatant inequality between the actors, the platforms are fighting back and trying to downplay the scope of the Commission's proposals with the support of a number of MEPs.

There is enormous lobbying against any regulation of platforms by their trade bodies but also among the EU decision-makers.

Meanwhile, there is growing concern at the effective monopolization of the means of online distribution and of the Internet economy as a whole by a handful of oligopolistic billionaires. Studies now show how they represent a major threat to cultural diversity. This in turn tends to reduce the cultural choices and livelihoods of our creators.

The European creative community is calling for more regulation and a more equitable distribution of wealth on the Internet.

So far it appears that only the EU now has the means and political will to effectively regulate the FANG...Facebook, Amazon, Netflix and Google.

I recommend that you read Jonathan Taplin's *Move Fast and Break Things*. This book explains the exact nature of the internet where the three web giants - Google, Facebook and Amazon - actually have a very narrow vision. It is increasingly considered in the EU that they do not contribute to our culture and give little support to our creators and their films, whereas they receive enormous sums every year through our creativity. Their under-payment of taxes is another bugbear of course.

Every country needs a strong film/television industry for reasons of identity, values, social cohesion, and cultural diversity, which is at the heart of our society and our democracy.

As African director Alain Gomis pointed out in the London Film Festival recently, "there is surely something wrong when only 10% of the world's population appears on screen. It is important we and our stories are also seen."

I couldn't agree more.

Key EU laws on copyright and audiovisual media services will be adopted before summer 2018. It remains to be seen what European parliamentarians, civil servants and nation state Ministers will achieve in concert. I remain optimistic we will see real improvements referred to earlier to redress the imbalances in the digital environment.

In the meantime some Member States are showing the way with laws that demand new digital players are obliged to invest in the cultures where they earn significant revenues.

European film-makers, authors, performers, composers are saying very loudly that decision makers must act in the interest of European creative industries, our cultural diversity and our creators.

Our European Coalitions for Cultural Diversity will continue to campaign alongside them.

Thank you for listening.