

<p style="text-align: center;">Creative Content Online e.films's answer to the consultation on policy and regulatory issues</p>

e.films was set up in May 2007 as a non-for-profit association with the specific aim of bringing together film rights owners and other stakeholders in the European film sector to collectively develop and benefit from emerging opportunities brought about by the Video on Demand (VOD). The originality of the initiative is to gather independent films companies and the most advanced VOD initiative to make the most of the VoD opportunities.

Our main objectives are hence:

- to gather European film rightsholders to share experience and to understand the digital business in order to make the most out of the VOD opportunities;
- to ensure that European films are available online on a fair and economically sound basis from the rightsholders' point of view;
- to establish a legitimate and attractive VOD offer.

e.films works on the premises that unless film producers and film directors work together on a collective basis European films are going to be marginalised on the future distribution platforms.

Current members include:

- Nimbus Film – DK – Bo Ehrhardt (Chairman of e.films)
- EGEDA – Spanish Collective Society
- The VOD company - DK
- Phantavision – NL
- The Danish Film producers Association



e.films welcomes the *Communication on Creative Content Online in the Single Market*. Devising on the online distribution of creative content is decisive for all creative industries.

Currently the VOD offer exists only at national level, reproducing the traditional exploitation of films on a territory-by-territory basis. Yet, VOD represents the opportunity to address the lack of presence of European films on international markets. European cinema has now the opportunity to challenge the current market structure and develop its international distribution capacity. The “long-tail” theory identifies new economic and growth opportunities brought about by the online environment and foresees a switch from “hit-driven” content market to a niche products and specialist product market. It addresses the traditional shelf place problem, European films, which are usually considered as a niche market, will attract a smaller but faithful audience whose weight, in economic terms, will equal the one of mainstream works. This scenario could be the remedy to inefficient distribution structures and benefit European cinema.

Nonetheless, the offering of non-national European films is unlikely to be a strong business proposition unless there was a strong demand along with business operators able to generate such demand. In the absence of large European film studios active at international distribution levels, this is unlikely to happen.

Hollywood studios are already getting prepared to take full advantage of VOD prospects. Considering their large catalogue, their control of the complete “food chain” from concept to consumer, and their world wide integration with blockbuster release slates, they start with a clear advantage over the European film industry. Furthermore, the circumstances are far more distinct in Europe considering the highly fragmented film market made of national licensing and a patchwork of rights and regulations. The European online distribution market functions on a country-by-country basis which is limiting the growth opportunities for the film sector.

It is evident that territory-by-territory licensing will continue for the following reasons:

- buyers of licence will want to acquire the VOD rights for the territory they are active on;
- film producers need the money of the rights’ buyers (theatrical distributors and broadcasters) to finance their films.
- VOD rights will represent for years to come a small part of film companies’ revenues.

If the long tail is to become a reality, together with the availability of European films at international levels, it is crucial that European film makers address the licensing process and make it easier for service providers to access European films. The European Commission is therefore right to address the issue of licensing.

Even the largest international operators of digital platforms such as Apple – which seems so far the best positioned to launch international platforms - is struggling with the rights issues and are delaying their full launch in Europe. Apple, like any other international platform, needs to secure 27 individual copyright licences in each Member states. This does not serve the prospects of improving distribution of non-national European film. On the contrary, alike what happened for music in 2000 when iTunes was launched, the European film industry can legitimately fear that international platforms will mainly feature US content for which US content owners control the rights internationally i.e. Hollywood blockbusters.

e.films's goal is to avoid that European films will be marginalised on the most successful international digital film platforms, which are already run by Apple (iTunes), Microsoft (Xbox Live Marketplace) or Google, Amazon and similar. Besides, current dominant Media players with substantial stake in Hollywood (Time Warner; News Corp, Sony) are acquiring direct interest in local operators (e.g. Disney and Sony recently took full control of FilmFlex, the VOD platform running on Virgin Media Cable).

Furthermore, the European online distribution landscape is characterised by the role played by telecoms companies, which are often former states monopoly trying to compensate their diminishing calls business by looking into entertainment and media. These are essentially active in their national territory and are able to make competitive offering limited to language and marketing reach. It is to fear that these operators will predominantly make use of Hollywood and national film blockbusters to attract traffic. The business opportunity will be to carve a significant market share.

Nevertheless, initiatives have taken place in Europe to enable film producers to hold on to their rights and exploit directly their VOD with the potential to exercise their rights on an international basis. EGEDA in Spain, Universciné in France and the VOD Company in Denmark are showing the way. These initiatives have in common that producers decide on a collective basis to keep control on their VOD destiny. They recognised that creating scale in term of catalogues and pooling resources enabled them to be in a better position to influence market developments and to reinforce their bargaining position with licensees (broadcasters, telecoms companies or Internet Service Providers).

It would hence make sense to encourage those national initiatives to collaborate and gather their resources and knowledge. We need to avoid that each territory go through the same problems and the same mistakes in relation to licensing process or choice of technology.

By acting collectively, e.films members will be able to influence the European market structures in their best interest and represent a key conduit for making Europe's national cinematic richness available online. **e.films** seeks to enable European independent film companies to act together proactively so that they can contribute to creating the conditions for a competitive VoD market.

It is core to **e.films**'s mission to prepare the European film industry to the new challenges posed by film on demand:

- the challenge of technology (the use of DRMs – Standardisation – Metadata)
- the challenge of licensing
 - negotiations with large and powerful operators
 - ensuring fair contractual terms
- to inform the film sector on business and technology developments
- Address languages issues
- Consider national and European support policies in light to the VOD challenges

e.films believes that a minimum standardisation of processes need to be worked out to help the national initiatives to communicate and promote exchange of catalogues across frontiers.

The European Commission is able to play an important role in supporting a common vision that is required if European wants to exist in the new distribution platforms.

e.films would like to thank the Commission for giving stakeholders the opportunity to communicate their views. We remain at your disposal in case you would like to have further information.

Bo Ehrhardt
Director Nimbus Films
Chairman of e.films