



**FIAD - FIAPF – IFTA - IVF Submission in response to the
Commission’s Reflection Document on Creative Content in a Digital Single Market:
Challenges for the Future**

January 4, 2010

EXECUTIVE SUMMARY

FIAD, FIAPF, IFTA and IVF are trade associations representing producers and distributors of cinematographic and audiovisual works on all carriers and platforms. Our members are European and multinational companies active in Europe and worldwide. Our collective comments focus on three areas that are either dealt with in the Commission’s Reflection Document on Creative Content in a Digital Single Market or directly relevant to the issues raised therein.

First, the copyright system is neither too complex, rigid nor an obstacle to consumer satisfaction. It is a crucial strategic tool for securing financing and exploitation of audiovisual works by means of the exclusive rights granted to right holders to license their works to commercial users (e.g. to film and video distributors, broadcasters, online platforms, etc.) as well as directly to end users. Thus, copyright is not a mere remuneration model for which alternatives may be found at European-wide level. On the contrary, the copyright system offers the film industry the possibility to reach the aim of generating surplus over and above the basic compensation of its creative participants – a surplus which is necessary to fund future production projects. The copyright system guarantees the producer’s ability to secure financing and distribution for future projects thereby ensuring an ongoing supply of films.

Any future legislative and/or policy actions concerning exceptions and limitations to copyright, for example concerning orphan works, should be proportional, tailored to the different types of content and compatible with current EU and international law. Article 118 of the Lisbon Treaty is not the appropriate legal basis for intellectual property legislation as it was drafted with a view to legislating in the field of industrial property. In any event, introducing a European copyright law would be unnecessarily complex.

Second, right holders’ contractual freedom and exclusive right to choose the terms of distribution of the copyright work, including the distribution channel and the territorial scope of the rights licensed, is crucial to maximising revenues from audiovisual content. This regime remains vital in many cases of European film-making in order to secure financing prior to the shooting of the actual film as the various exclusive exploitation rights are basically sold off/licensed to national distributors prior to, or during, the principal photography of the film. The contractual freedom granted to right holders to license their content the way they choose does not constitute an obstacle to the launch of innovative services available across borders.

Mandating a single clearance framework for the whole of Europe will not create a pan-European market or audience for European films: the audience must be attracted to films by topic, language, timing and mode of distribution, all variables which are the subject of the particular expertise of the producer and the distributors specialized in the various distribution channels.

Third, increasing legal offer on its own will not single-handedly solve the issue of online copyright infringements. A focussed enforcement policy is an essential element of developing the market for legal online services so as to create a level playing field for new services delivering copyright content over digital networks to end users. Due to the unique financing and distribution model of the film industry, piracy has damaging effects beyond the lost revenues: piracy damages the value of films by lowering the license fees that may be obtained from local distributors (who cannot compete with “free” sources), thus removing the incentive and in many cases the ability to finance and produce future films.

In conclusion, we urge the Commission to develop thoughts on how to ensure a sustainable European film industry in the emerging digital future. The future of the European film industry will depend on individual creativity, innovation and entrepreneurial vision backed by a supportive European legal regime which ensures a level playing field on all distribution platforms and which recognizes the specificities of the film industry and its crucial financing and distribution requirements.

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