

## **Contribution of Constantin Film - Germany**

### **Types of creative content and services online**

**1. Do you offer creative content or services also online? If so, what kind of content or services? Are these content and services substantially different from creative content and services you offer offline (length, format, etc.)?**

The Constantin Film homepage offers trailers of feature films, DVDs and TV productions in different qualities and formats. This includes trailers, podcasts, as well as picture files and further bonus material. In addition, each film has its own web page with additional material.

Furthermore Constantin Film was one of the first production and distribution companies to participate in the Video on Demand market.

**2. Are there other types of content which you feel should be included in the scope of the future Communication? Please indicate the different types of content/services you propose to include.**

We regard Video on Demand as well as other forms of electronic distribution as an important area of growth. With regard to the new mobile possibilities, we believe that the development of profitable business models as well as the availability of reliable channels of distribution and suitable consumer devices are crucial for the future viability and should therefore be at the center of attention here.

### **Consumption, creation and diversity of online content**

**3. Do you think the present environment (legal, technical, business, etc.) is conducive to developing trust in and take-up of new creative content services online? If not, what are your concerns: Insufficient reliability / security of the network? Insufficient speed of the networks? Fears for your privacy? Fears of a violation of protected content? Unreliable payment systems? Complicated price systems? Lack of interoperability between devices? Insufficient harmonisation in the Single Market? Etc.**

It must be clarified, which formats for online services have to be adapted or to be developed. It is indispensable to adapt valid copyright and territorial protection further to the digital development and to clarify the legal situation. Here it is advisable to establish co-operations with other countries and a regulation on the level of the European Union. Moreover, the concept of the DVB-H net infrastructure has to be extended to adapt to the fast development of the Mobile TV services. The supply of standardized end devices is absolutely necessary, in order to create acceptance for the product as well as to generate sufficient interest by our potential customers.

**4. Do you think that adequate protection of public interests (privacy, access to information, etc) is ensured in the online environment? How are user rights taken into account in the country you live / operate in?**

In Germany the protection of the users is controlled on basis of the market's development → voluntary self-control. The regulations for data protection are very strict

**5. How important for you is the possibility to access and use all online content on several, different devices? What are the advantages and / or risks of such**

**interoperability between content and devices in the online environment? What is your opinion on the current legal framework in that respect?**

The consumer's need has to be at the center of our attention. There is a strong development towards consuming content anytime, anywhere and anyhow. This need has to be met – and this means that the technical and regulatory prerequisites have to be met and viable business models derived. For us it is an utmost concern not to repeat the mistakes of the music industry, but to facilitate the access to the new medium through advertising and awareness campaigns and to use the legal framework in a much more sensible way as it happened in the music industry.

Legal download offers have to be more user-friendly and have to be superior to illegal downloads.

**Competitiveness of European online content industry**

**7. If you compare the online content industry in Europe with the same industry in other regions of the world, what in your opinion are the strengths and weaknesses of our industry in terms of competitiveness? Please give examples.**

Situation in the USA: the USA is the leading nation with regards to online content development. One of the reasons for this leadership is the low level of regulation which should also be the aim in Europe.

Situation in South Korea: Since South Korea launched its own satellite for DMB (digital Multimedia Broadcasting) in March 2005, a massive run on DMB receivers for laptops and mobile phones broke out. On 1st of May 2006, those pilot broadcasts were installed to be transmitted on a regular basis. Approximately 140.000 Koreans already enjoy the advantages of the new medium.

The service users acquire for a one-off connection fee of 11 EUROs access to several video channels for News, Sports, Movies and several Audio-channels.

In every respect, mobile content is a huge success in South Korea: the mobile phone customers can enjoy music videos, karaoke and dancing lessons on their mobile phones. In the meantime Japan also started its own DMB services and blocked a part of its digital TV frequency spectrum for usage in cars and with mobile phones. Just like in South Korea, mobile contents are substantially more successful in Japan than in Germany.

For instance, the multicoloured i-mode-service already has a veritable success history in Japan for over four years now, while mobile phone customers in Europe and North America do not adopt these services yet.

We welcome the development of the online content industry in the European Union and hope for a timely solution of the present legal shortcomings.

**New business models and transition of traditional ones into the digital world**

**8. Where do you see opportunities for new online content creation and distribution in the area of your activity, within your country/ies (This could include streaming, PPV, subscription, VOD, P2P, special offers for groups or communities for instance schools, digital libraries, online communities) and the delivery platforms used. Do you intend to offer these new services only at national level, or in whole Europe or beyond? If not, which are the obstacles?**

Constantin Film regards VOD and Download to Own as well as all other forms of electronic distribution as significant area of growth in the mid term future. For additional ways of online content distribution viable business models, as well as suitable technological and legal preconditions have yet to be established. In general, it is our aim to market our in-house productions on an international level.

**10. Are there any technological barriers (e.g. download and upload capacity, availability of software and other technological conditions such as interoperability, equipment, skills, other) to a more efficient online content creation and distribution? If so, please identify them.**

The question of a uniform transmission standard must be clarified. It does not seem reasonable to introduce both DMB and DVB-H and we have to keep in mind that television via UMTS could create excessive demands on the capacities of mobile phone networks. Finally, at present, the broadcasting technology is far more suitable to deliver TV transmissions to millions of mobile phone customers than mobile phone technology. For the mobile phone provider it is cheaper to stream 1 MB of television content using Broadcast instead of UMTS. Considering the extensive investments needed for UMTS licences, it can be expected that the mobile phone providers will use their networks rather for demanding services than for TV transmissions.

**11. What kind of difficulties do you encounter in securing revenue streams? What should in your view be the role of the different players to secure a sustainable revenue chain for creation and distribution online?**

In Germany, introducing TV broadcasts for mobile phone reception is less of a technical problem than the lack of customer interest and the lack of business models which provide a common umbrella for the regional broadcasting stations, media companies and content providers.

Watching television via UMTS, as it is offered by Vodafone and T-mobile at present, is a service offered by mobile phone companies for which they expect revenue by directly charging the customers.

In order to receive DVB-H or DMB, users need equipment that includes an appropriate receiver. The distribution of these programs is not being carried out by the providers network, but like conventional television, an independent transmitter is being used.

The mobile phone providers also show little inclination to support the introduction of these technologies because it is not clear how they can earn money with it.

For us it is very important that suitable business models are derived that ensure a certain revenue stream in order for us to develop suitable content.

### **Payment and price systems**

**12. What kinds of payment systems are used in your field of activity and in the country or countries you operate in? How could payment systems be improved?**

A significant shortfall / problem is that currently it is difficult to access online content without the use of a credit card as payment device. However, as credit cards are only available from the age of 18, this means that the important target group of teenagers cannot access online content and are thus "forced" into resorting to piracy as only means of accessing online content. The US has better solutions for this problem. Moreover, mobile phone providers have a significant competitive advantage in this respect.

### **Legal or regulatory barriers**

**17. Are there any legal or regulatory barriers which hamper the development of creative online content and services, for example fiscal measures, the intellectual property regime, or other controls?**

The issue of rights ownership is crucial to the development of creative online content. With regard to feature film rights, the producer owns all rights in perpetuity and can therefore develop suitable online content. However, with regard to TV productions we currently have the situation that the broadcasters own all the rights of the content as they are outright service productions. As it is the inherent business model of broadcasters generate revenues through the sale of advertising time and not to develop content; however the producers who develop content do not own the rights. As long as the legal / regulatory framework is not clarified / adapted with regard to rights ownership, producers cannot develop new formats.

**18. How does the country you mainly operate in encourage the development of creative online content and services?**

The legal situation has to be defined and current laws and regulations have to be adapted to these new forms of content and distribution.

**Release windows**

**19. Are “release windows” applicable to your business model? If so, how do you assess the functioning of the system? Do you have proposals to improve it where necessary?**

**Do you think release windows still make sense in the online environment? Would other models be appropriate?**

We would welcome a more flexible handling of the holdback periods for subsidised German films (currently 6 months for video and 24 month for television), since these are no longer up-to-date through the new forms of distribution and obstruct the competition with foreign films.

Flexibel release windows would increase the competitiveness of legal download platforms and would ensure a contemporary availability on all distribution channels.

Due to the rising penetration of broadband Internet, as well as increasing network capacities, the distribution of digital contents in TV-quality via illegal filesharing networks will become even easier.

Only the reduction of the holdback periods, as well as the enhancement with high-quality bonus features like making-ofs, will provide the premise for a successful and legal online market.

**Piracy and unauthorised uploading and downloading of copyright protected works**

**21. To what extent does your business model suffer from piracy (physical and/or online)?**

**What kinds of action to curb piracy are taken in your sector/field of activity and in the country or countries you operate in? Do you consider unauthorised uploading and downloading to be equally damaging? Should a distinction be made as regards the fight against pirates between “small” and “big” ones?**

We regard the illegal duplication of films as mass phenomenon. However in Germany a total damage at a value of 350 million Euro results annually from movie piracy. The world-wide

damage according to the US film federation Motion Picture Association OF America (MPAA) adds up on more than 3.5 billion Dollars. Up to 53 per cent of all US films are available on illegal download networks far before their premiere.

As described in question 19, the long release windows limit our ability to create a legal alternative and to satisfy the desire of the customers for a contemporary availability of new films.

In order to fight Internet piracy, Constantin Film pursues a strategy which is based on three columns:

- Education: Internet Piracy is not a harmless crime! Education / information is the first and most important step in the fight against piracy. The damage resulting from movie piracy endangers jobs, incriminates the economy and finally leads to higher prices for cinema attendance and DVDs, as well as to a reduction of film variety. People who produce pirate copies, distribute or even consume them do not only harm themselves but also affect other film fans.
- Pursuit: Copyright infringements must be legally pursued! Artists, distributors and producers must be able to protect their copyrights on a judicial way. A Download on the Internet is just as punishable, as spreading illegal CD-ROMs or other copies. The recording during a cinema screening is immediately brought to justice. Moreover, the investigations against media piracy have been intensified and investigation results are made readily available to the police and the public prosecutor. Professional investigations also take place in cooperation with the „Gesellschaft zur Verfolgung von Urheberrechtsverletzungen e.V. (GUV). In addition to that it is necessary to create initiatives in order do adapt applicable law to the new digital developments.
- Offer: The Internet must be legal as new commercialization channel for films! For the theatrical film industry, the internet is without a doubt a highly interesting medium for the commercialisation of its products. The necessary fight against Internet piracy may therefore not block this development. Therefore the industry is demanded to satisfy this demand by offering consumer-friendly, legal Internet offers. Constantin Film is anxious that a German online video store will be offered by film distributors in the near future.

**22. To what extent do education and awareness-raising campaigns concerning respect for copyright contribute to limiting piracy in the country or countries you operate in? Do you have specific proposals in this respect?**

We are of the opinion that awareness campaigns will not suffice to effectively fight organised movie piracy. A specialised police force should, with the support of the GUV, be installed. Only severe penalties will deter movie piracy. However, an awareness campaign may succeed in causing end-consumers to realise that they are accomplices to a crime, and that they should reconsider and realise that they involve themselves in criminal activities.

The GUV uses dramatic and provocative motifs to call attention to the subject of copyright theft. But the fact is, the present law allows for prison sentences for up to five years to be given in particularly serious offences. In Germany, such sentences have already been enforced. Just last August, two cases which the GUV helped to investigate ended in sentences of two years and one year, respectively. Here are the GUV-figures from 2005:

Introduction of at least 2,549 new cases

In 78.70% of all cases, works of film were the subject matter

470,790 data carriers were taken into possession, 63.9% of those carried movie data.

In 2005, 1,842 cases were successfully closed.

**23. Could peer-to-peer technologies be used in such a way that the owners of copyrighted material are adequately protected in your field of activity and in the country or countries you operate in? Does peer-to-peer file sharing (also of uncopyrighted material) reveal new business models? If so, please describe them?**

We are not convinced that peer to peer technology has the ability to ensure that the rights of the owners of copyrighted material are adequately protected. New business models, like a flatrate for music downloads (Napster), are not applicable for us.

### **Rating or classification**

**24. Is rating or classification of content an issue for your business? Do the different national practices concerning classification cause any problem for the free movement of creative services? How is classification ensured in your business (self-regulation, co-regulation)?**

In Germany material which is intended for public demonstration, is examined by the „Freiwilligen Selbstkontrolle der Filmwirtschaft“ (FSK). An obligation for examination by the FSK does not exist, however the members of the SPIO (Spitzenorganisation der Filmwirtschaft) committed themselves to publish only FSK controlled productions. The FSK is financially autonomous and funds their work from fees which are included in every certificated copy.

### **Digital Rights Management systems (DRMs)**

**Digital Rights Management systems (DRMs) involve technologies that identify and describe digital content protected by intellectual property rights. While DRMs are essentially technologies which provide for the management of rights and payments, they also help to prevent unauthorised use.**

**25. Do you use Digital Rights Management systems (DRMs) or intend to do so? If you do not use any, why not? Do you consider DRMs an appropriate means to manage and secure the distribution of copyrighted material in the online environment?**

Our licensees are required to use DRM technology to assure territorial and other protection.

**26. Do you have access to robust DRM systems providing what you consider to be an appropriate level of protection? If not, what is the reason for that? What are the consequences for you of not having access to a robust DRM system?**

Our licensees have access to „Digital Rights Management Systems“, which ensure an appropriate measure of protection. Here, our prime concern lies not primarily with protecting our interests from hackers but to protect our territorial borders.

**27. In the sector and in the country or countries you operate in, are DRMs widely used? Are these systems sufficiently transparent to creators and consumers? Are the systems used user-friendly?**

In Germany all Video on Demand Services are protected with one Digital Rights Management system (DRMs). User friendliness is highly desirable for us, however still no long-term field reports exist in this area. Time will tell whether current DRMs offer sufficient user friendliness. Should this not be the case, Video on demand services should be in a position to initiate appropriately respond.

**28. Do you use copy protection measures? To what extent is such copy protection accepted by others in the sector and in the country or countries you operate in?**

At the moment we provide DVDs with copy protection measures, but we are contemplating the abandonment of these measures, as they have shown to be fairly ineffective and - above all - extremely user-unfriendly.

**29. Are there any other issues concerning DRMs you would like to raise, such as governance, trust models and compliance, interoperability?**

We do not see an urgent need here.

#### **What role for equipment and software manufacturers?**

**31. How could European equipment and software manufacturers take full advantage of the creation and distribution of creative content and services online (devices, DRMs, etc.)?**

It is important to communicate the advantages of the new distribution channels and to establish uniform standards. It is absolutely crucial for the success of online and mobile distribution that the development of network capacities is promoted.

To recoup the necessary investments, the all the players need clear perspectives as well as long-term legal and planning certainty.

#### **What role for public authorities?**

**32. What could be the role of national governments / regional entities to foster new business models in the online environment (broadband deployment, inclusion, etc.)?**

For the range of Mobile TV we appeal to the government to agree on the assignment of frequencies. The crucial assumption for a fast development of mobile TV is the development of the DVB-H net infrastructure.

**33. What actions (policy, support measures, research projects) could be taken at EU level to address the specific issues you raised? Do you have concrete proposals in this respect?**

We would appreciate research projects, the formation of specialised working groups as well as a facilitation of cooperation across national borders. Furthermore, we would welcome the regulation and alignment of all standards.

Contribution de Constantin Film - Germany