

ANSWER OF FIAD TO THE PUBLIC CONSULTATION ON CONTENT ON LINE IN THE SINGLE MARKET

General remarks

FIAD is an international organization gathering national syndicates of film distributors. Film distributors are intermediates between film producers and cinema exhibitors to organize the release of films. They have by contract their rights from producers. For a specific film the distributor may have all or part of the following rights:

- cinema exhibition rights
- video rights on physical supports
- VOD rights on the Internet
- Pay per view rights on coded televisions
- Broadcasting rights on pay television (television by Hertzian waves, cable or satellite)
- Broadcasting rights on free television (same ways of broadcasting).

The rights are transferred for a limited period of time and a specific territory. Usually the distributor gives an advance to the producer (guarantee) and also advances the release costs (prints and advertising).

The exploitation of the rights may be done by different partners having from the producer only a part of these rights: film distributors for cinema exhibition rights, video publisher, television operator. All these partners are likely to give advances to the producer, and so doing allow to finance the production of the film. Its exploitation will be organized under the principle of exclusivity (windows) allowing each partner to recoup his investment.

As such FIAD is not in a position to answer some questions which mainly address companies. However as an industry organization it may give answers to some questions of this public consultation.

Question 1

Not able to answer.

Question 2

Not able to answer

Question 3

The concerns of the rights holders we represent are security for putting their films online and the action against piracy. These points are developed later on.

Question 4

The signature of charts such as in Cannes on May 23rd, 2006 on the initiative of the European Commission is a contribution to the creation of an adequate on line environment for the defence of the rights holders while giving consideration to the interests of the public.

Question 5

Going further than the question of devices one must distinguish between different ways of releasing films leading to specific economic models:

- paying access in a public place (cinema theatre as far as we are concerned)
- pay vision at home (from a physical device or from the access to a network : television, the Internet)
- free vision at home (from the access to a network).

Question 6

Cultural diversity and linguistic diversity may benefit from online release. Regarding films we think that most of the releases will go to works already known by the public due to other ways of releasing them, particularly cinemas. Only some cinema enthusiasts will take care to go and search online for works they do not know.

For that reason the MEDIA program is a tool which is more necessary than ever: it helps the circulation of European works throughout Europe, allows the distributor to benefit from a support for part of his guarantee and part of the p. and a. costs. The works, which have already been released in cinemas and are so known from the public, are the more likely to find an additional release on the Internet.

Question 7

Our cinema industry testifies the richness of the cultural diversity and the linguistic diversity we know in Europe. It is both a strength and a weakness. To the difference of what may exists in other parts of the world Europe is not yet a single market for the circulation of intellectual property but rather the addition of twenty-five markets. Therefore there is the necessity to make the works more known by the public through mechanisms such as the MEDIA program.

Question 8

The question is mainly within the field of rights holders but one should not contemplate creating new exceptions or limitations to copyright and going further than what exists in the European directive on copyright.

Question 9

Market studies show that online content takes a part of the release through physical material. The stake is to create a virtuous circle creating value and not to destroy value with the cannibalisation of one way of releasing the works by another one. In other words: do safety devices guarantee against piracy and is the consumer ready to pay an adequate fee to the rights holders?

Question 10

Not able to answer.

Question 11

Looking further than the interests of rights holders themselves, securing revenue streams needs the following actions:

- from a technical point of view, to secure the measures of protection
- from a juridical point of view, to fight against piracy
- from an economical point of view, transparency and competition in the markets with an awareness regarding the risks of monopolies (FAI – rights holders)

On these three elements the public authorities, national and European ones, have a part to play.

Question 12

Not able to answer.

Question 13

Regarding cinema works, rights holders search for payments per vision for the most recent films with a proportionate share of the price paid by the public.

Question 14

Regarding films – and more particularly European films – they have a release firstly in their producing country. In consideration to their notoriety and success the release is organized afterwards in other countries. The MEDIA program plays a major part there. The release in a country gives exclusivity to the distributor as a counterpart of the finance he brings to the production.

Question 15

Not able to answer, the question mainly interests rights holders.

Question 16

The fees paid to the rights holders must be organized through a direct link between the consumer and the operator. Any mechanism aiming to the creation of a system of legal licence leading to an expropriation of copyright must be left aside.

Question 17

The intellectual property regime must not be considered as an 'obstacle' to the development of creative online content and services. Intellectual property is the guarantee for the production of works.

Question 18

FIAD, as an international organization, is not concerned by experiments in a specific country. However it welcomes the charts signed between ISP and the cinema industry for the creation of a legal offer and the action against piracy: it considers them examples to follow.

Question 19

The release windows are the result of the territoriality of the rights and the necessity for each investor financing a film to recoup his investment. So it is necessary, to ensure the preservation of film production, that these windows would remain. The release online of a work will be organized on a national market in relation to the windows of the market. For the European single market one must give consideration to the release of the work by each investor and to allow the producer to recoup his investment. The management of windows must remain the decision of the rights holder, within the framework of national regulations or industry agreements.

Question 20

We do not think to be able to answer. If the question has relations with directive TVWF, the question of the guarantee of the exposure of an adequate offer of European works cannot be left aside.

Question 21

- a legal offer may only pretend to exist if one fights against illicit offers; that is the only possibility for the legal offer to bring a remuneration allowing to compensate the reduction of revenues coming from other medias (for example the sale of physical material);
- measures to limit piracy are firstly technical devices, then action on awareness-raising of the public and juridical authorities, lastly actions of repression;
- the operations of peer to peer networks makes the distinction between uploading and downloading a secondary issue as the files are automatically shared;
- one must make a distinction between pirates which facilitate the infringement of technical devices or put online for the first time films and the other pirates; however these last persons may not ignore the illicit aspect of their activity and must be sentenced by appropriate measures.

Question 22

Awareness-raising campaigns bring results on the long term. We have seen that regarding campaigns dealing with tobacco or alcohol. The campaigns must be adapted to the public they are aimed at: parents, educators, police authorities, magistrates. One must for example show that in Europe cultural industries represent millions of jobs (cf. the Lisbon agenda) and that the attacks against intellectual property put these jobs in peril. Other campaigns may be adapted to national particularities but an European campaign would be a good idea.

Question 23

Technologies of peer-to-peer go further than what is authorized in the field of private copying when we speak about protected works. Their use for material which is not protected by copyright may be possible. Technical devices must allow ISP to warn users against illicit sharing of protected material. The mechanisms of legal licence covering peer-to-peer exchanges of protected works must not be considered.

Question 24

The aims of rating or classification of works are the protection of youngsters and teenagers against works which are not suitable for some publics. Classifications are the results of national sensibilities either in their process (auto-regulation, action of public authorities, etc.) than in their results (the measures may vary from one country to another). As a rule it has no consequence on the free movement of works as it has only the result to limit the access of some publics to some works.

Question 25

As such FIAD is not taking part in the use of DRMs. But it encourages rights holders to use them for a better exploitation of their works.

Question 26

This question mainly regards rights holders.

Question 27

Same answer.

Question 28

Same answer.

Question 29

If the result of interoperability is the infringement of technical devices it must not be authorized.

Question 30

Opening archives online must be done in the respect of rights holders. Regarding cinematographic works, few films are in the public domain. The remuneration of rights holders for protected works, even in archives, allows to keep financing new production.

Question 31

The development of licit offers should open opportunities for European companies dealing in software and hardware. There should be a potential either for big companies or for small ones, probably with the creation of jobs.

Question 32

National governments and regional entities must encourage both online content for licit material and policies allowing actions against illicit offers. Awareness-raising campaigns must be organized with these authorities. They must avoid that some areas or parts of the population would not find access to legal offers.

Question 33

We would like:

- the development and continuation of the MEDIA program
- the encouragement by European authorities of the signature of charters on online content
- awareness-raising campaigns, particularly aimed at young publics.