CONTRIBUTION TO THE CONSULTATION
OF THE EUROPEAN COMMISSION ON THE ISSUES
“ASSESSING STATE AID FOR FILMS AND OTHER AUDIOVISUAL WORKS”

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September 2011

The current Cinema Communication ‘Communication of the Commission on certain legal aspects relating to cinematographic and other audiovisual work’ which was introduced in 2001 needs substantial refinement in order to be more relevant and efficient to the audiovisual industry as it has evolved to date.

There is a need to recognise all aspects of the film-making process (not just production) and importantly the effect of the proliferation of devices and platforms from which audiovisual content may be consumed. This presents challenges and opportunities for the whole industry.

The current ‘cultural product’ principle has become very narrow and needs to be replaced in the minds of consumers by ‘cultural experience’. Therefore, the existence of a proliferation of different cultural tests has become rather vague and unsatisfactory.

Key points in relation to a new communication:

1. A new Cinema Communication on state aid for audiovisual and interactive works should be based on the cultural derogation as provided by art. 107. 3 (d) TFEU. Aid should benefit all audiovisual and interactive works and projects intended by policy makers in the member states to have a cultural impact.

2. A new Cinema Communication should be compatible with the principles of necessity, proportionality and effectiveness but, respecting the principle of subsidiarity, it should be for individual Member States to decide the basis and objectives for this support.

3. A new Cinema Communication must cover all aspects of upstream and downstream activities in the value chain for the creation, production, distribution and promotion of audiovisual and interactive works.

4. A new Cinema Communication must cover all kinds of fiscal instruments aimed at strengthening cultural impact either directed to the creation and dissemination of audiovisual and interactive works or directed at improving the talent base, the technological infrastructure, or the development and implementation of new business models in the sector (such as aid for digitisation of cinemas, new business models for creation and distribution).

5. Territorialisation requirements should be maintained as they stand now. Given that the European audiovisual sector is fragmented, characterised by plural language areas, an industry based on SMEs and weak ties to the capital markets, exacerbated by the economic downturn, this is not the time to disrupt the willingness of the member states to support their own creative industries.
6. The current aid intensity limit of 50% should be maintained, but only for the production costs. A new Cinema Communication should allow for higher aid intensity for low budget and difficult films based on the member states cultural impact assessments.

A new Cinema Communication must be effective and transparent in its operation and capable of dealing with an ever-evolving industry undergoing rapid change through technology advances.

1 What should be the objective of State aid for films and audiovisual works?

State aid (selective and automatic) for film and audiovisual works has a cultural objective which is to create and distribute such works throughout national and European territories. They are therefore important contributors to both a national and a European cultural identity and cultural diversity.

State Aids are made available by national Governments because of the importance placed on the creation of works which have a national/European identity, promotes the development of an indigenous talent base and can lever risk-taking in the creation of audiovisual works.

State Aids have also been put in place by way of the need to support a very weak fragmented market which lacks capital firepower and on its own has no ability to combat the competition from Hollywood product. European state aids have also contributed to the diversity of produced audiovisual works and so allow the audience/consumer alternatives to US films.

Audiovisual works have both a cultural and economic impact. They are works created collaboratively by artists but which can produce a substantial economic impact which policymakers see as desirable.

2 How should one measure that this objective is fulfilled?

Bord Scannán na Éireann/the Irish Film Board believe that as state aids are put in place there should be a framework for measurement in order to assess the value-for-money impact.

Cultural policies are not easy to measure and may differ from territory to territory, however, a framework should be put in place that can assess national and European outputs.

The audiovisual industry has been adroit at making the case for funding from national and regional bodies so such a framework should be achievable.

3 How should the subsidy race to attract major film production be controlled?

Bord Scannán na Éireann / the Irish Film Board believes that subsidy itself exists to promote the creation of cultural works which is why Governments create support systems. Alongside these support systems which create cultural impact the economic spin-off can be significant. If the cost of the state aid was only industrial/economic it could be argued that it would cost too much to produce the effect. In other words the aid can only be justified on cultural grounds.
The European audiovisual sector operates in a global environment and cannot run the risk of being marginalised or unable to compete internationally. Already non-European territories Canada, US, Australia and increasingly Asia are heavily supporting their own audiovisual and creative industries and so support in European territories is set against this background. In fact it could be argued that the subsidy race is not intra-European but global and that investment into Europe should be encouraged.

It is important to stress the positive economic effects for the audiovisual sector, importing technical, artistic know-how and promoting the exchange of knowledge and abilities. This exchange results in an increase of the range, quantity and level of production skills and technical expertise with positive effects on the quality of European film and on the promotion of culture. These benefits alongside the crucial cultural impact is why national governments are interested in supporting the audiovisual industry – a dilution in either would probably mean a dilution in support from national authorities.

4 What activities other than production should be included in the scope of the Communication and which State aid criteria are appropriate for such activities?

Bord Scannán na hÉireann / the Irish Film Board believe that one of the major opportunities in the drafting of a new Cinema Communication is the possibility of widening the scope of activities rather than the Commission having to deal with these on a piecemeal basis.

Those activities include:

- pre-production support to scriptwriting and development
- production
- post-production
- promotion (including film festivals)
- distribution
- International sales
- exhibition (cinemas, dvd, VOD platforms)
- aids to digitisation (cinemas)
- educational programs

All these stages contribute to the realisation of a cultural project and to its accessibility for the public.

5 What factors should be taken into account by State aid assessment criteria for activities other than production?

Bord Scannán na hÉireann / the Irish Film Board considers that the main criteria should be the linkage to culture, how does the aid support cultural diversity.

The production of a ‘cultural product’ on its own is not of itself enough unless audiences have access to that ‘cultural product’. Again, this goes back to market fragmentation and capital investment – which may be greater in countries which have a larger audiovisual capacity rather than those smaller member states that have small markets and small production capacity.
6 How should the switch of cinemas to digital projection be covered by future rules on aid to cinema?

The switch to digital projection is an imperative. The issue of switchover will be who ultimately bears the cost of the capital investment. It is the opinion of Bord Scannán na hÉireann / the Irish Film board that in order to promote cultural diversity state aid will need to play a part in the conversion. Without state aid availability, the creeping monopoly by the US will wipe-out the distribution of European works. Therefore Member States should be given the freedom and flexibility to support any type of movie theatre when they judge that it is necessary and particularly small independent cinemas.

7 What should be the scope of products to be supported?

Should the scope of the Communication extend beyond films and TV productions to other types of audiovisual projects? If so, what definition of “audiovisual project” should be used?

The current Cinema Communication means only “audiovisual works”, television and cinematographic works. It is again the view of Board Scannán na hÉireann / the Irish Film Board that the new Cinema Communication presents a wonderful opportunity to widen the scope of audiovisual works to meet the challenges of a multi-platform environment

- aid to works conceived for the Web (web fictions, web docs);
- aid to works created from or for mobile phones;
- aid to experimental works to develop new types of audiovisual creation (for instance supporting works conceived for a cross-media exploitation);
- Aid to interactive works, including video games.

With the exclusion of works aiming at eg. advertising and pornography.

Such works should still have a cultural impact. The widening of the scope within the Cinema Communication has the possibility to transform the audiovisual industry into a really creative industry. It could stimulate third-party investment and the emergence of new business models giving rise to a less fragmented industry capable of being more sustainable.

8 What should the maximum aid intensities be?

Should the current maximum overall aid intensity remain at 50% of the production budget, with higher aid intensities for difficult and low-budget films?

Bord Scannán na hÉireann / the Irish film Board believe the 50% rule is vital with the existing derogation for difficult or low budget audiovisual projects based on national definitions and justified by the assessment of the potential cultural impact.

If activities other than production are to be covered by the Communication as well, would it be appropriate to set the maximum overall aid intensity as 50% of the total project budget (covering script-writing, development, pre-production, principal photography, post-production, distribution, promotion and marketing costs)?

The 50% aid limit should apply, as it currently does to production. Other activities, which may come within the scope of the new communication, may require intensities higher than 50%. Again this may be different in territories with higher audiovisual production capacities.
The measurement of aid intensity should be based on risk and the existence (if any) on the availability of other capital.

**Would it be appropriate to encourage cross-border cooperation by allowing a higher overall aid intensity ‘of perhaps 60% for film projects which involve activities in more than one member state, including co-production?’**

Bord Scannán na hÉireann believe that the aid intensity of 50% could be lifted in the case of European co-production as a means of encouraging more co-production and co-distribution of films.

**If other types of audiovisual projects are to be covered by the Communication, what should the appropriate maximum overall aid intensity be?**

Other types of audiovisual projects, whether works conceived for the Web or works for mobile phones, are often only developed at the experimental stage. Therefore, it falls to public authorities wishing to diversify the offer of audiovisual works, to support research into and the development of such audiovisual works by granting them subsidies within the development limitations.

9 **To what extent are territorial conditions justified?**

The current Cinema Communication allows a member state to require that up to 80% of the production budget of a subsidised film production should be spent in the territory of the member state offering the aid. This requirement leaves the producers the opportunity to spend 20% of this budget in the territory of one or several other Member States.

It has not been our experience that this has impeded the producers ability to co-produce in an effective manner. Producers are adept are enjoining territories and what they offer.

It is normal that in any co-production there is a ‘lead team’ and we believe that the ‘lead team’ should have the freedom to decide in artistic and logistical terms the structure of the hires on a film. Invariably, in a co-production it will be a mix of nationals and non-nationals.

Where a territory is small and characterised by an inefficient local market the 80% rule is less of an issue as that territory must necessarily co-produce. Where a territory is larger and has more of an evolved local market the 80% rule may well be an inhibitor to co-production.

Bord Scannán na hÉireann / the Irish Film Board believes that if territorialisation is diluted, Governments will no longer see a value to providing support systems. Therefore there is a trade off in terms of investment and impact.

**Should member states be allowed to impose territorial conditions on aid for audiovisual projects? If so, would it be fair to limit this to 100% of the aid amount or is there a more appropriate benchmark?**

Bord Scannán na hÉireann / the Irish film Board believe that member states should be free to impose territorial conditions in relation to aid for projects.

If there is no territoriality the investment will cease as national governments will not see the value of any investment.
10 Does the digital revolution affect the State aid rules?

Should conditions on production support be imposed to encourage a smooth digital transition, such as ensuring that a digital master is produced and requiring that publicly-funded works are released under Creative Commons Attribution-ShareAlike licences?

Since most European films receive public support, it could help to develop film culture/literacy and ensure that supported films are safeguarded for future generation if such funding is conditional on the supported films being deposited and available for cultural/educational use. Should a new Communication invite member states to do so, especially if the public funding is over 50% of the film’s budget?

Should distribution support cover distribution on all platforms (i.e. not only, for example, for releasing in cinemas)?

The digital revolution does affect state aid rules. Member states should be allowed to specify conditions on production, support to encourage a smooth digital transition, but should not be allowed to require that publicly funded works are released under the Creative Commons Attribution ShareAlike licences.

Films which are publicly funded should have as a condition of this funding, a requirement to be deposited in national archives, and available for access on terms to be decided by each member state.

The safeguarding of film and the existence of a legal deposit exists in most member states and if not, should exist. The new Communication should impose this condition.

Educational use should be on a normal commercial basis.

The widening of the scope of the Cinema Communication would capture distribution on all platforms.

As the consumer/audience fragments across many different platforms it is imperative that member states can contribute to these new forms of distribution and hence promote cultural innovation.