



EUROPEAN COMMISSION

## **ISSUES PAPER**

### **Assessing State aid for films and other audiovisual works**

This document does not represent an official position of the European Commission. It is a tool to explore the views of interested parties. The suggestions contained in this document do not prejudice the form and content of any possible future proposal by the European Commission.

# ASSESSING STATE AID FOR FILMS AND OTHER AUDIOVISUAL WORKS

## 1. INTRODUCTION & PURPOSE

- (1) Audiovisual works, particularly films, play an important role in shaping European identities. They reflect the cultural diversity of the different traditions and histories of the EU Member States and regions<sup>1</sup>. Audiovisual works are both economic goods, offering important opportunities for the creation of wealth and employment, and cultural goods which mirror and shape our societies.
- (2) Within the EEA, any assistance given by a public body to undertakings which has the potential to distort competition and affect trade between EU Member States is subject to the EU State aid rules. This generally includes public support for audiovisual works.
- (3) In 2001, the European Commission adopted a Communication which set out the State aid assessment criteria for support for producing films and audiovisual works (the Cinema Communication)<sup>2</sup>. The validity of these criteria was extended in 2004, 2007 and 2009.
- (4) The 2009 extension<sup>3</sup> announced that new rules on State aid to cinematographic and other audiovisual works would come into effect by 31 December 2012, at the latest, when the existing rules would expire. It also noted that the Commission had carried out an extensive study into the economic and cultural impact of territorial spending obligations imposed in film support schemes. The results underlined the need for further reflection before proposing a modification of the existing State aid assessment criterion in the 2001 Cinema Communication concerning territorial spending obligations, compatible with the fundamental principles of the Treaty.
- (5) At the same time, the Commission stated that "a number of different trends have emerged since the 2001 Cinema Communication which will require some refinement of [the State aid assessment] criteria in due course. These trends include support for aspects other than film and TV production (such as film distribution and digital projection), more regional film support schemes, as well as competition among some Member States to use State aid to attract inward investment from large-scale, mainly US, film production companies."
- (6) To follow up on this and other issues which have come up in more recent case practice, the Commission should complete a review of the Communication by the end of 2012, taking these developments into account.

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<sup>1</sup> As expressed in the UNESCO Convention on the promotion and protection of the diversity of cultural expressions (2005).

<sup>2</sup> Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works, COM(2001)0534 final, OJ C 43, 16.2.2002, p. 6–17.

<sup>3</sup> Communication from the Commission concerning the State aid assessment criteria of the Commission Communication on certain legal aspects relating to cinematographic and other audiovisual works (Cinema Communication) of 26 September 2001, Official Journal C 31, 07.02.2009, p. 1.

- (7) This issues paper attempts to define the context for films and audiovisual works in future and to identify areas for reflection and indicate possible orientations on the future rules for any related State aid. The Commission will be guided by comments on the issues paper submitted during the 3-month consultation period ending on 30 September 2011.
- (8) All contributions will be published, possibly in summary form, unless the author objects to being identified publicly. In this case, their contribution may be published in anonymous form. Otherwise, the contribution will be neither published nor taken into account.
- (9) Organisations should use the Register of Interest Representatives<sup>4</sup> to provide the European Commission and the public at large with information about their objectives, funding and structures. Submissions from organisations which have not registered will be treated as individual contributions.
- (10) Contributions to the consultation and any related enquiries should quote the reference HT.2950 and be sent by e-mail to: [stateaidgreffe@ec.europa.eu](mailto:stateaidgreffe@ec.europa.eu) .

## **2. CONTEXT**

### **2.1. The European audiovisual sector**

- (11) The EU Member States provide an estimated €2.3 billion per year in film support: €1.3 billion in grants and soft loans, €1 billion in tax incentives<sup>5</sup>. Around 80% of this is for film production.
- (12) The EU has become one of the largest producers of films in the world: 1,168 feature films were produced in the EU in 2009 (compared to 677 produced in the US and 456 produced in China)<sup>6</sup>. The main Member States providing film support are France, UK, Germany, Italy and Spain.
- (13) Most European films receive production support. Frequently, these films have a limited market share, even in their own national markets. Films produced or financed by the major US distributors have an average of around 70% of the EU box office<sup>7</sup>. The US market share is even higher in certain Member States and in the home video market.
- (14) A cause of the lack of circulation of European works is the deep fragmentation of the European audiovisual sector, which consists of a large number of small- and medium-sized enterprises (SME's). In 2007, there were over 600 film production companies in France, 400 in the UK and 200 in Germany.
- (15) Frequently, these businesses produce a small number of films and may even be set up to produce only single projects. There is only limited support available for developing audiovisual projects. It is therefore difficult for producers to obtain a sufficient level of

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<sup>4</sup> [www.ec.europa.eu/transparency/regrin](http://www.ec.europa.eu/transparency/regrin)

<sup>5</sup> [2008 Study on the Economic and Cultural Impact, notably on Co-productions, of Territorialisation Clauses of state aid Schemes for Films and Audiovisual Productions & Corrigendum](#)

<sup>6</sup> [European Audiovisual Observatory – Focus 2010](#)

<sup>7</sup> See footnote 6.

upfront commercial backing to put together a financial package so that production projects can proceed. The high risk associated with their businesses and projects, together with the perceived lack of profitability of the sector, has reinforced its dependence on State aid.

- (16) Territorial spending obligations are quite often attached to State aid for producing films and audiovisual works, potentially with the unintended consequence of increasing the fragmentation of the sector.
- (17) However, supporting mainly the production of films could be seen to have led to a degree of over-production compared to the traditional distribution channels available (eg, cinema, home video, TV). The Commission's MEDIA programme and some Member States support the distribution and promotion of European films via both traditional and new platforms.
- (18) State aid for activities other than production are not covered by the Cinema Communication but have been approved by the Commission directly under Article 107 TFEU.

## **2.2. Existing State aid assessment criteria**

- (19) The current Cinema Communication sets out the rationale and the specific criteria on the basis of which State aid for the production of films and audiovisual works is assessed under the cultural derogation of Article 107(3)(d) TFEU. The four criteria are in particular that:
  - The aid is directed to a "cultural product". Member States must ensure that the content of the aided production is cultural according to verifiable national criteria (in compliance with the application of the 'subsidiarity' principle).
  - The producer must be free to spend at least 20% of the film budget in other Member States. It may thereby be imposed on the beneficiary to spend up to 80% of the production budget of an aided film or TV work in the granting Member State (territorialisation).
  - Aid intensity must in principle be limited to 50% of the production budget. Difficult and low budget films are excluded from this limit.
  - Aid for film production must not be earmarked by a Member State for specific filmmaking activities (e.g. post-production) in order to ensure that the aid has a neutral incentive effect and does not protect just those specific activities in the granting Member State.

## **3. ISSUES**

### **3.1. Is there a need for change?**

- (20) In reviewing the functioning of the present Communication, a number of important issues have come up with the Commission believes should be looked into. This section discusses these issues and formulates a series of questions on which the Commission seeks the views of stakeholders.

### **3.2. Why do we fund film?**

- (21) Since the Commission's State aid Action Plan of 2005, the State aid rules developed by the Commission have followed a common structure which begins with identifying the objective which the proposed aid is intended to achieve. Any aid measures to achieve the stated objective must be necessary, proportionate and effective.
- (22) There seems to be agreement among Member States that public subsidy is important to sustain European film production. Considering the amount of money Europe has spent over the past years to subsidise the production of more than 1,000 feature films each year, of which only a small minority is ever seen outside their country of origin, it is important to examine whether the public funding is being applied as effectively as possible.
- (23) Depending on whether film funding is provided at international, national, regional and local levels, every film fund has its own selection criteria and objectives. According to the State aid notifications received by the Commission, Europe's national, regional and local film funds do not appear to have a common objective or strategy. While this is a sign of cultural diversity and independence according to the subsidiarity principle, it should not lead to contradictory funding.
- (24) There are relatively few comparable and comprehensive data about the European audiovisual sector in the public domain. This hinders effective and rational decision making by public actors.
- (25) For example, Member States collect cinema box office data but most of the revenues and profits for films now come from other sources, such as DVD. Indeed, many European films are not released in cinemas. Detailed film production budgets are treated as business secrets even if films are made with public funding. There is a lack of structural business statistics to evaluate better the economic significance of the sector and trends therein.
- (26) The European audiovisual sector is at a critical turning point. Faced with the need to consolidate public finances in the wake of the financial and economic crisis, several Member States have already cut back their film support budgets. Some film funding bodies themselves have been threatened with closure.
- (27) Clarifying the objectives Member States pursue in supporting European films would also help in assessing whether support is actually delivering demonstrable results with regard to the objectives.
- (28) Moreover, greater clarity would also help the Commission in developing common rules governing State aid in the sector. Aims such as increasing audience choice, building audiences for European films, ensuring the cultural diversity of content and stimulating innovation, openness and creativity are present in many funding schemes and could be a starting point for this reflection.

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

*How should one measure that this objective is fulfilled?*

### 3.3. How should the subsidy race to attract major film production be controlled?

- (29) As mentioned in paragraph (5), in 2009, the Commission had identified "competition among some Member States to use State aid to attract inward investment from large-scale, mainly US, film production companies" (ie, a subsidy race) as a trend which would require some refinement of the State aid assessment criteria. This trend appears to have continued since then.
- (30) International film production companies, mainly based in the US, operate on a global basis and are able to choose between a very wide range of alternative locations. Blockbusters and other major international productions are extremely mobile.
- (31) If a country has a suitable, large film studio, it strives to attract these productions to that location, and to obtain as big a return as possible by way of employment of local film service companies, cast, crew, facilities and a wide range of ancillary services. Attracting blockbusters typically includes tax incentives and other measures to facilitate the production of these international feature films and television programmes in particular territories. The result is a potent mix of push and pull between international producer and locality.<sup>8</sup>
- (32) Major US-financed films have an average production budget of \$65 million (€46 million), with the most expensive films exceeding \$200 million (€141 million)<sup>9</sup>. This is many times higher than those of typical European productions. While attracting them with subsidies may ensure that these high profile films are made in Europe rather than elsewhere, such subsidies distort competition among European production locations. In these cases, the question is not *whether* the film will be produced but only *where* this will be done.
- (33) To the extent that this use of public subsidies in effect leads to competition with other Member States, this is detrimental both to the sector and to European taxpayers. It was not envisaged when the original State aid rules for promoting the European cinematographic culture were designed. Avoiding subsidy races is precisely one of the objectives of the State aid provisions of the Treaty.
- (34) The maximum aid intensity of 50% allowed by the existing rules permits aid amounts for such productions to be very high. From an economic perspective, it could be argued that supporting such productions indirectly supports European film services, may generate knowledge spinoffs for the European film industry and may have ancillary benefits (eg, tourism). However, the profits related to such productions may be retained largely outside the EU and therefore do not necessarily contribute to the long-term sustainability of the sector. Furthermore, commercial films financed and distributed by the US majors should not have the same problem of access to private finance faced by their European competitors. So the necessity of such aid is not evident.
- (35) To attempt to address this subsidy race, more emphasis has been placed on the criterion that the film has to be a "cultural product". One example is the UK film tax incentive<sup>10</sup>, where the UK Cultural Test was designed with a view to avoiding films

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<sup>8</sup> *The Film Studio – Film production in the global economy (2005)* by Ben Goldsmith & Tom O'Regan.

<sup>9</sup> Source: <http://www.the-numbers.com/glossary.php>. Exchange rate: €1:\$1.42 as at 7 April 2011

<sup>10</sup> Case SA.19919 (ex-N461/05) – UK Film tax incentive

without on-screen cultural content benefitting from the aid. A number of other Member States have subsequently followed a similar approach, based on the cultural criteria in small film support schemes previously approved by the Commission.

- (36) However, the Commission's experience to date suggests that the Cinema Communication criteria are inappropriate for preventing schemes seeking to compete to attract inward investment productions. In addition, the systematic close scrutiny of cultural conditions has been controversial with Member States, especially since, in view of the 'subsidiarity' principle, the Commission is not in a position to assess the national definitions of what constitutes "culture". Evidently, since the criteria were not designed for this type of support, they are inadequate to tackle the subsidy race.
- (37) It is difficult to identify standard rules which could exclude or at least limit the distortion caused by aid to major foreign productions. One possibility could be to limit aid for a single production to a certain amount, assuming that films with very high budgets can obtain the necessary upfront financing commercially. Another possibility could be to insist in addition that all aid, or at least aid beyond this threshold, is granted on condition that it is reinvested or reimbursed in case the production makes a profit.

*What would be the most effective way for the Commission to control this subsidy race?*

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

- (38) As mentioned in paragraph (5), in 2009, the Commission had identified "support for aspects other than film and TV production (such as film distribution and digital projection)" as a trend which would require some refinement of the State aid assessment criteria.
- (39) Some Member States offer support for activities other than film and audiovisual production, including script-writing, development, film distribution, film promotion, film festivals, training, developing film culture, film conservation and archiving. Although these types of support are not covered by the Cinema Communication, where the support exceeds the *de minimis* threshold<sup>11</sup>, the Commission applies the criteria of the Cinema Communication as a reference to assess the necessity, proportionality and adequacy of the aid.
- (40) It may be appropriate to extend the scope of the Cinema Communication to include all aspects from story concept to delivery to audience, such as film development and distribution. In addition, the Communication could perhaps cover support for promotion and distribution platforms, like film festivals, video-on-demand, digital projection and rural cinemas. This could help to avoid stimulating the supply of audiovisual content without ensuring that the corresponding distribution and promotion of such content matches demand. It would also increase legal certainty regarding the support for such activities under Article 107(3)(d) TFEU if they are linked to films which are eligible for aid as cultural products. This could ensure that such films reach an audience.

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<sup>11</sup> [Commission Regulation \(EC\) 1998/2006](#)

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

- (41) In September 2010, the Commission adopted a Communication on opportunities and challenges for European cinema in the digital era<sup>12</sup>. The Communication noted that subsidies to cinemas showing a certain share of European or arthouse films have been approved under Article 107(3)(d) TFEU and State aid to small cinemas and cinemas in remote areas has been approved under Article 107(3)(c) TFEU. In addition, subsidies to individual cinemas are likely to fall within the scope of the *de minimis* Regulation. Public support schemes for digital projection equipment should follow the principle of technological neutrality.

***How should the switch of cinemas to digital projection be covered by future rules on aid to cinema?***

**3.5. What should be the scope of products to be supported?**

- (42) In view of technological changes since 2001, the definition of what constitutes an audiovisual work eligible for aid under the Cinema Communication may need to be reconsidered. The definition of 'audiovisual works' covered by State aid criteria of the current Cinema Communication is limited to films and TV productions.
- (43) However, today there are also new types of audiovisual works such as 'cross-media'<sup>13</sup>. Some Member States have argued that different types of audiovisual works, in particular interactive works such as video games, should be assessed using the same criteria as for films and television productions. However, these being sectors with different characteristics from those of films and television productions, other State aid assessment criteria may be appropriate.

***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?***

**3.6. What should the maximum aid intensities be?**

- (44) The maximum aid intensities compatible under the Cinema Communication seem to have been accepted by the sector. A clarification which has proved necessary in the Commission's case practice is that the maximum aid intensity refers to the overall State aid granted to an individual production, regardless of whether or not it is from a different aid scheme or from a different Member State.

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

***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)?***

<sup>12</sup> [http://ec.europa.eu/culture/media/programme/overview/consultations/docs/COMM\\_PDF\\_COM\\_2010\\_0487\\_F\\_EN\\_COMMUNICATION.pdf](http://ec.europa.eu/culture/media/programme/overview/consultations/docs/COMM_PDF_COM_2010_0487_F_EN_COMMUNICATION.pdf)

<sup>13</sup> Cross-media film projects are stories which span film, television, online, mobile and gaming. See case SA.31720 – France: Aid for new media projects.

*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-productions?*

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

### **3.7. To what extent are territorial conditions justified?**

- (45) As regards audiovisual production support, the territorial criterion of the existing Communication allows Member States to insist that up to 80% of the production budget of a subsidised film production is spent in the Member State offering the aid.<sup>14</sup> However, this poses consistency problems with the fundamental principles of the Internal Market, which guarantee the free movement of goods, persons and services. This is why other types of support mentioned in Section 3.4 cannot be subject to territorial conditions..
- (46) The criterion does not explain how it should be applied in the case of co-productions. In its case practice, the Commission interprets the criterion to mean that the condition is limited to 80% of the amount contributed by the co-producer to the overall production budget.
- (47) A 2008 study into territorial conditions<sup>15</sup> found that a wide variety of territorial conditions are imposed in film support schemes. It made a distinction between explicit territorial conditions and those which were implicit. The number and complexity of these conditions can cause conflicts between the rules applied by different schemes which may fund the same film, as well as legal uncertainty. This legal situation was found to be difficult and costly, not only for film producers but also for policy makers and funding bodies trying to achieve a coherent approach.
- (48) The study found that, in the Member States with high territorial requirements, the audiovisual industry had a higher turnover<sup>16</sup>. In addition, the costs of film production seem to be higher in those countries which apply territorial conditions than in those which do not.
- (49) Regarding co-productions, the study found that territorial conditions may cause some problems for co-productions and may make them less efficient. The study also reported that removing the possibility to impose explicit territorial conditions altogether might lead to an increase in implicit territorial conditions, reducing the transparency for film producers.
- (50) The 2001 Cinema Communication noted that some territorial conditions "may be necessary to ensure the continued presence of the human skills and technical expertise required for cultural creation. This should be limited to the minimum degree required

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<sup>14</sup> For example, if a Member State offers €500,000 to a €3 million film production, it can insist that up to €2.4 million of the production budget is spent in the Member State as a condition of the aid. Note that some Member States express their territorial obligations as a percentage of the aid amount (such as 150% of the aid amount must be spent in the Member State – ie, €750,000 in the above example).

<sup>15</sup> See footnote 5.

<sup>16</sup> However, it is unclear whether the higher level of turnover per capita is caused by the higher level of territorialisation, or whether the political interest in territorialisation is caused by the greater importance of the audiovisual sector in countries where this sector is relatively large.

to promote cultural objectives." Digital production techniques are now extensively used throughout the European audiovisual sector. These techniques reduce the need for all the expertise required for cultural creation to be present in the same territory.

- (51) The deep fragmentation of the European film sector, which for many years has been one of its competitive disadvantages, may be made worse by territorial conditions. However, the main reason why film producers have supported territorial conditions in the past is that they felt that they helped the funding bodies to encourage Finance Ministries to allow more film funding.
- (52) Limiting the scope of Member States to impose territorial conditions to, for example, 100% of the aid amount could address the legal concerns while maintaining an incentive to support film production<sup>17</sup>. At the same time, this should allow the promotion of cultural objectives. It could also lead to some consolidation in the sector, increasing its sustainability.

***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?***

### **3.8. Does the digital revolution affect the State aid rules?**

- (53) The audiovisual sector faces challenging new technologies and changing consumer behaviour, which radically altered the music sector 15 years ago<sup>18</sup>. There are also new creative concepts such as 'cross-media'<sup>19</sup> which a younger generation of filmmakers are experimenting with.
- (54) The existing structures and business models present a problem of over-production of European films compared to the demand for such films which can be satisfied using conventional distribution practices. So perhaps it is opportune for Europe to explore innovative alternatives applying the internet and digital production and distribution techniques. It is worth noting that most of the independent filmmakers successfully using these alternative approaches are based in the US.
- (55) An issue is whether the specific rules on State aid in the audiovisual sector can or should be adapted to this evolution. The experience of the new generation of filmmakers suggests that some kind of support could be appropriate. This could include development, production, offering marketing tools and providing training in techniques for engaging audiences.

***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<sup>20</sup> licences?***

***Should distribution support cover distribution on all platforms (ie, not only, for example, for releasing in cinemas)?***

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<sup>17</sup> In the example given in footnote 14 of a Member State offering aid of €500,000 to a €3 million film production, this would imply that the Member State could insist that up to €500,000 of the production budget is spent in the Member State as a condition of the aid.

<sup>18</sup> See the recent [Digital revolution: engaging audiences report](#) prepared for Cine-Regio.

<sup>19</sup> See footnote 13.

<sup>20</sup> <http://creativecommons.org/licenses/by-sa/3.0/>

- (56) In certain circumstances, it may be appropriate to support 3D production, digital post-production and digital cinema as well. During this transition period, it may be necessary to support innovative business models, offer advice, training and seed money, as well as supporting archiving, including building databases and digitising old, analogue content.
- (57) Given the high percentage of SME's in the European audiovisual sector, perhaps applying other existing State aid rules could be appropriate. There is already a General Block Exemption Regulation<sup>21</sup> which exempts certain types of public support for SME's, risk capital, research, development, innovation and training from State aid notification. There are also specific rules for supporting research, development and innovation<sup>22</sup>, providing risk capital<sup>23</sup> and offering training<sup>24</sup>. These rules should allow Member States to help innovative audiovisual businesses and individuals to explore new business models and/or experiment with new film techniques.

*Since most European films receive public support, it could help to develop film culture/literacy and ensure that supported films are safeguarded for future generations 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 a new Communication include additional State aid rules for supporting initiatives designed to encourage businesses to take advantage of the digital revolution?*

### **3.9. Are there any other issues?**

- (58) There may be issues regarding State aid for the European audiovisual sector which have not been identified above.

*Are there any other issues which the Commission should consider in a new Communication?*

## **4. THE FUTURE**

- (59) The State aid rules which succeed the current Cinema Communication will need to cover a situation which is rapidly evolving in view of changing consumer preferences and technological developments. The same will be true for the support provided from 2013 onwards by the successor of the Commission's current MEDIA programme.
- (60) In addition to financing the creation and distribution of films and audiovisual works, support will probably continue to be needed to encourage audiences to appreciate film culture (eg, through film festivals) and to interact with films and filmmakers, particularly in the case of younger audiences and presenting rare films.
- (61) To complement such financial support, public administrations may also need to intervene in non-financial ways to maximise the impact of any State aid that is made

<sup>21</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008R0800:EN:NOT>

<sup>22</sup> [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006XC1230\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006XC1230(01):EN:NOT)

<sup>23</sup> [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010XC1207\(02\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010XC1207(02):EN:NOT)

<sup>24</sup> [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009XC0811\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009XC0811(01):EN:NOT)

available. Potential regulatory issues include digital rights, content requirements<sup>25</sup>, net neutrality<sup>26</sup>, artificial barriers between audiences and films they want to see (such as release windows<sup>27</sup> and territorial licensing), as well as helping to resolve conflicts between different players.

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<sup>25</sup> Article 16 of the Audiovisual Media Services Directive (2010/13/EU) requires broadcasters to reserve a majority of their transmission time for European works. In addition, Article 17 requires them to reserve at least 10% of their transmission time or of their programme budget to European independent productions. Moreover, under the new Article 13, on-demand audiovisual media services should promote the production of and access to European works.

<sup>26</sup> The essence of the 'net neutrality' debate concerns how best to preserve the openness of the internet and to ensure that it can continue to provide high-quality services to all and to allow innovation to flourish.

<sup>27</sup> The traditional film release schedule involves giving an exclusive 'window' to different distribution channels, including cinemas, DVD, pay-TV and free-to-air TV. Under Article 8 of the Audiovisual Media Services Directive, Member States are to ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rights holders.