



FEDERATION INTERNATIONALE DES ASSOCIATIONS DE PRODUCTEURS DE FILMS
INTERNATIONAL FEDERATION OF FILM PRODUCERS ASSOCIATIONS

January 15th, 2010

**SUBMISSION IN RESPONSE TO THE
COMMISSION'S CONSULTATION ON THE FUTURE
"EU 2020" STRATEGY**

FIAPF – International Federation of Film Producers' Associations

The International Federation of Film Producers Associations (FIAPF) is a trade organisation dedicated to the defence and promotion of the legal, economic and creative interests of film and audiovisual producers throughout the world.

FIAPF members are 25 national producers' organisations from 22 countries across the globe, from Europe, India and China to Japan, North America, Latin America.

All together, the creative output of the production companies in FIAPF member organisations represents the majority of all theatrical feature films made each year in the world, and a fast growing proportion of all television programming.

More and more the film industry, including some members of FIAPF, is pursuing the offer of cinematographic and audiovisual works online, either directly to end-users or working in cooperation with service providers or content aggregators following different business models (e.g. time-limited viewing, streaming or digital delivery of permanent copies). Such new services bring wider choice to consumers as they involve an increasing variety of content, notably on the Internet but also through other types of networks. Although most of the content offered on-line is also offered off-line (e.g. on DVD/Blu-Ray), specific on-line versions and new content produced specifically for on-line distribution are also being developed.

We appreciate the opportunity offered to take part in the above-mentioned public consultation. The members of FIAPF agree with the Commission's basic premise that Europe must pursue a sustainable social market economy, where our prosperity will continue to depend on, among other, strong European innovation and creativity, including in the European audiovisual sector.

There are many issues raised by the Commission's Working Document on the future "EU 2020" strategy, and we anticipate that the Commission's dialogue on the important topics raised therein will continue for a while. At this stage, we limit our comments to our industry's core issues.

Copyright's Place in our Future Society – Multi-territoriality

The Commission Working Document recalls the importance of a "well-functioning system of intellectual property rights, which allows for efficient and cost-effective protection, enables innovative business start-ups, [. . .]". We agree with the Commission's assessment and it is our view that the copyright system and the exclusive rights granted to the creators are fundamental to encouraging creation in the audiovisual sector and to ensuring that the financial means are available to develop creative content irrespective of the means of distribution. We also believe that a focussed enforcement policy is an essential element of developing the legal online market for creative content so as to create a level playing field for the legal online services.

The EU's legal framework for copyright in the Information Society is the subject of much public debate which could suggest that copyright rules are too complex and/or rigid, that European media companies' current business models are perhaps not sustainable in the future economy, that copyright territoriality could be an obstacle to consumer satisfaction, etc. We take issue with such suggestions and wish to emphasize the importance of maintaining the supremacy of exclusive rights as provided for in international copyright treaties and the *acquis communautaire*.

Exclusive rights are essential to the functioning of the audiovisual sector. This includes the right holder's entitlement to choose whether to manage the rights concerned individually or collectively through a collective management entity. As many right holders (and indeed many others) collaborate to create a film, the producer will almost always be responsible for securing the investment and funding for the film project as well as for the subsequent exploitation and distribution of the finished film. The producer exercises this role either by direct ownership of copyright and/or by transfer of rights from other right holders by law or contract but the end result is the same the rights are consolidated in the producer. Depending on the national system, these right holders comprise directors, scriptwriters, actors, music score composers, and other relevant parties whose creative contribution to the collective work

earns them individual rights under national copyright law. This system has evolved over the years to ensure the optimal exploitation of the audiovisual work as well as legal certainty for down-stream licensees. This consolidation of rights provides the producer with the flexibility needed to efficiently exploit the film on behalf of all the right holders involved in the creative process and to take into account the specificities of particular films, markets, consumer tastes, etc.

Right holders' contractual freedom and exclusive right to choose the territorial scope of the rights licensed is crucial to maximising revenues from audiovisual content and 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 exploitation rights are basically sold off/licensed prior to, or during, the shooting of the film. New distribution channels such as online delivery of film will have to contribute to the financing of films in a manner similar to that already provided by the pre-sale of rights to theatrical, video and television distribution.

The members of FIAPF are involved in rights clearance both as licensees and licensors on a daily basis across borders, whether geographic or linguistic. Although defining and agreeing on a specific licensing contract can sometimes involve detailed contractual negotiations, licensing deals and rights clearance are the essence of the film industry's financing model – this is how the production, creative and distribution communities attempt to meet the production costs and make a return on investments in producing and distributing the film. Without these negotiations, content producers and distributors are deprived of the essential way of financing production and distribution of content. This is particularly true for smaller and medium-sized European producers whose very existence depends on a precarious mix of funding sources including pre-sales of rights.

The decision to engage in single or multi-territorial licensing is made on the basis of informed decisions aimed at maximizing exposure of the works, on a case-by-case basis, with due consideration for local sensitivities (cultural preferences, classification regulations, language, etc.), local demand and the requirement to ensure full consumer satisfaction. Suffice to mention specific consumer demands for subtitling and very often dubbing to understand how film distributors must be closely responsive to local taste.

Conclusion

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 across borders. So far, right holders have seen limited consumer and commercial demand for such services. Online service providers and platforms are focusing their efforts on breaking through in national markets, often in challenging conditions. The market performance and expected immediate growth of new online services remains modest. As to the licensing models that are actually being pursued in the market-place, these reflect, and correctly so, the diverse needs and demands of the European creative community, their financing requirements and consumer demand. All parties are best served by arm's length commercial negotiations based on the principle of contractual freedom and the exclusive rights established and protected by copyright law.

We urge the Commission to develop thoughts on how to ensure a sustainable European audiovisual sector in the emerging digital future. In economic terms, our industry is not integrating at EU level; it is integrating at a global level, as attested, for instance, by the multiplicity and reach of bilateral co-production agreements extending outside of Europe, and

by the presence throughout Europe of sales agents, producers and creators who work with European talent as well as talent from the rest of the world.

In light of the positive outcome of the successive generations of the MEDIA Programme and the first results of the MEDIA International, we also recall the importance of the European Union remaining committed to financial support to the film industry, with more focus in the future on the development and the production of tomorrow's films.

It is indeed creative boldness, innovation and excellent marketing skills that help film and audiovisual content cross EU national and linguistic borders and gradually build up trans-national consumer demand within the EU and on the world-wide market. The future sustainability of the European audiovisual sector 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. This will enable the European audiovisual sector to play its role in the digital Single Market and contribute to the sustainable growth of the European Union.

FIAPF remains at the Commission's disposal for further information where necessary.

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