

Questionnaire on the tools used in the application of Article 13 AVMSD
(Promotion of European works in on-demand services)

The European Commission Services would like to ask your input for a reflection about best practices and experiences regarding the means used in application of Article 13 AVMSD (Directive 2010/13/EU). We would therefore be grateful if you could provide us with your comments on the following issues **by 20 September 2013** the latest.

1. Since your Member State notified its measures to the Commission related to the implementation of Article 13 AVMSD, has there been any modification to the legislation or the other notified measures? In the case you have not yet notified such measures to us, please indicate if you have adopted any such (implementing) measures in the meantime? Please indicate also any additional co- or self-regulatory initiatives in this field and any other similar measures that have not been notified. Please provide specific details about the form and content of such measures.

There has not been any modification to the Danish legislation regarding on-demand audiovisual media services since the notifications to the Commission related to the implementation of the Directive. The Danish implementation of Article 13 and the further requirements for on-demand services according to the AVMSD do not include an obligation to register for on-demand providers in Denmark.

The Danish Agency for Culture (which inter alia performs the task of being secretariat of the Danish Radio and Television Board) is active in an ongoing constructive process with the Danish Media Association (being the relevant association covering the field of internet providers) regarding the obligations of the Directive concerning providers of on-demand services.

As a first step, the work has resulted in a description by the Danish Agency of Culture and the Danish Media Association of the obligations of the Directive concerning providers of on-demand audiovisual media services, including the obligations on European works as implemented in Section 10 of the Executive Order of January 28, 2010 on programme services on the basis of registration and also on-demand audiovisual programme services.

The Danish Media Association has communicated the description of the obligations to their members, who inter alia include the vast majority of providers of on-demand audiovisual media services in Denmark, which are in fact comprised by Article 13.

Likewise the Danish Agency of Culture has communicated the description on their website, where all relevant information for audiovisual media providers on inter alia the AVMSD regulation and the Danish implementation of those rules is gathered and communicated.

Step two in the process is to draw up a code guiding operators on how to discharge their obligations concerning European works as implemented in the Danish legislation. The goal is a code presenting and explaining the obligations according to Article 13 as implemented in the Danish legislation in detail, giving examples and guidelines, including measurable indicators, such as percentage margins for pursued share, prominence tools and financial contribution .

The Danish Radio- and Television Board would like to underline, that European works in Denmark generally are promoted highly due to overall cultural politics. In that context it should be mentioned, that the Danish public service radio and TV-station DR – except from catch-up services for newer

programmes - is obliged to offer free access to their archive of own productions during time. Further, Danish libraries cooperate regarding a free on-demand service for all library users, schools and other institutions, called "Filmstriben", containing a broad range of European works. Finally, there exists a considerable range of public film funding instruments administrated by the Danish Film Institute.

2. In case you are applying a certain obligatory share of European works in catalogues:

2.1 Please describe any detailed rules in your national system regarding such a share (including any type of rules (legislative or non-legislative) but also recommendations, guidance, self-regulative measures etc.)

At this point, no obligatory share of European works is being applied. As mentioned above, it is intended to achieve acceptance of a code, that inter alia includes measurable indicators such as percentage margins for pursued share.

2.2 How do you monitor and enforce compliance with such requirements (please provide details regarding method/monitoring frequency/sanctions etc.) Beyond compliance, do you monitor and measure the efficiency of the measures (obligatory share in catalogues)? Please provide data about the findings of any such monitoring (see also question 2.4.).

At this point, there is no continuous monitoring taking place. When obtaining data for the Radio- and Television Board's report to the Commission, on-demand service providers are informed that reporting of relevant data can be given by providing inter alia information on the percentage of the share of European works.

2.3 On the basis of your experience in that field, do you consider such measures efficient? What are its advantages/disadvantages in your view?

On the basis of the information given above, there is no concrete experience to share at this point.

2.4 If possible, please provide data regarding the real presence of European works in the catalogues (e.g. in percentages, but if you have such data also regarding the time that the works remain in the catalogues, please share also that data), and if available, data regarding consumption of European works.

The data obtained for the Radio- and Television Board's report to the Commission for 2009-2010 showed, that the majority of the content supplied by Danish on-demand services at that point was European. Of the 29 suppliers who responded, 24 reported the extent of their European services to be in the range of 80-100 % of their total supply. The Board kindly refers to the data sheet provided to the Commission in February 2012.

2.5 How could such a system be improved in your view, based also on your experience?

There are positive expectations regarding the effects of the mentioned code coming up, please see above.

2.6 If you are not using such a measure in your national system, do you have a view about such a system, including reasons why you opted against the introduction of such rules?

Article 13 AVMSD does not define a binding magnitude for the share of European works in on-demand services. Further, Article 16 requires a majority proportion of television broadcasters transmission time,

while recital no. 58 in the Directive's preamble, says, that lighter regulation on on-demand services is justified. As far as the Danish Radio- and Television Board is informed, the Danish legislator so far has not considered it appropriate to define binding rules on i.e. share for European works in on-demand services in respect to the Directive's wording. Relevant information directed to the relevant service providers combined with the intended code as described above are assessed to be appropriate measures to achieve the requirements according to Article 13.

3. In case you are applying obligations related to the use of prominence tools:

3.1 Please describe any detailed rules in your national system in that regard (including any type of rules (legislative/non legislative) but also recommendations, guidance, self-regulative measures etc.)

At this point, no obligations related to the use of prominence tools are being applied. As mentioned above, it is intended to achieve acceptance of a code, which inter alia includes guiding examples for appropriate prominence tools.

3.2 In particular, do you have elaborated any specific prominence tools in your system, such as for example:

- indication of the country of origin in the description of the works in the VoD catalogue,
- titles searchable on the basis of the origin of works in the catalogue,
- displaying European works on the front page of the catalogue / in the start-up menu,
- creation of specific sections dedicated to European works in the catalogue,
- specific marketing features / recommendation tools related to European works,
- use of trailers to promote European works / giving special prominence to trailers of European works,
- other means of giving special prominence to European works in catalogues,
- promotion of European works in all media (not just in the VoD catalogue itself),
- Any other?

If yes, are such tools laid down by legislation / obligatory rules or in a different way (guidance, recommendations, self-regulative measures)? Could you provide a list of these specific tools?

As mentioned above, guiding examples for inter alia appropriate prominence tools are planned to be part of the upcoming code. At this point, there is no list of specific tools to share.

3.3 How do you monitor and enforce the compliance with such rules? (please provide details regarding method/monitoring frequency/sanctions etc.) Do you measure and monitor the efficiency of these rules? Please provide data about the findings of any such monitoring (see also question 3.6).

At this point, there is no continuous monitoring taking place. When obtaining data for the Radio- and Television Board's report to the Commission, on-demand service providers are informed that reporting of relevant data can be given by providing information inter alia on the prominence of European works in the catalogues, as for example the ranking of European works in search results.

3.4 On the basis of your experience, do you consider such measures efficient? What are their advantages/disadvantages in your view?

On the basis of the information given above, there is no concrete experience to share at this point.

3.5 How could such a system be improved in your view, based also on your experience? Do you have specific recommendations for particular prominence tools?

On the basis of the information given above, the Board has no specific recommendations at this point.

3.6 Could you provide data regarding the effect of such prominence tools in terms of their influence on consumption? Give examples regarding the particular ways to measure efficiency: increase of number of views after the use of a particular measure/prominence tool (e.g. the effect of appearance of the work / the trailer on the front page in terms of increased viewing figures). Please provide data in general regarding the consumption of European works in the catalogues in relation to the prominence tools applied.

The Board has no data regarding effects of prominence tools.

3.7 If you are not using such measures in your national system, do you have view about such a system, including reasons why you opted against the introduction of such rules?

We refer to the information given under question 2.6. As far as the Board is informed, the Danish legislator so far has not considered it appropriate to define binding rules on prominence tools for European works in on-demand services. Relevant information directed to the relevant service providers combined with the intended code as described above is assessed to be appropriate measures to achieve the requirements regarding Article 13.

4. In case you are applying obligations related to a financial contribution:

4.1 Please describe the detailed rules regarding a financial contribution in your national system. (e.g. on which players is it imposed, how is the required contribution defined/calculated including the basis of the imposition, how does it have to be fulfilled.)

At this point, no obligations related to a financial contribution are being applied.

4.2 Please describe how the imposed financial contribution is re-attributed if the system includes such reattribution (by which organism etc.) or how the financial contribution otherwise reaches the sector. In particular please describe who can benefit from this financial contribution, on which basis and how is it (re)attributed to them.

On the basis of the information given above, there is no concrete experience to share regarding this aspect. Reattribution is not intended to be part of the upcoming code.

4.3 How do you monitor and enforce compliance with that obligation (please provide details regarding method/monitoring frequency/sanctions etc.) Do you measure and monitor the efficiency / effects of the financial obligations? Please provide data about the findings of any such monitoring (see also question 4.6).

At this point, there is no continuous monitoring taking place. When obtaining data for the Radio- and Television Board's report to the Commission, on-demand service providers are informed that reporting

of relevant data can be given by providing information inter alia on the percentage of financial contribution to European works.

4.4 Could you provide data regarding the overall effect of the financial contribution (how much was collected / invested by such players in production overall per year)? If you did not do so already above, if possible, please provide data regarding the consumption of European works in the catalogues.

The Board has no data regarding the effect of financial contribution.

4.5 On the basis of your experience in that field, do you consider this system efficient? What are its advantages/disadvantages in your view?

On the basis of the information given above, there is no concrete experience to share regarding this aspect.

4.6 How could such a system be improved in your view, based also on your experience?

On the basis of the information given above, the Board has no specific recommendations regarding this aspect.

4.7 If you are not imposing such an obligation in your national system, do you have view about such a system, including reasons why you opted against the introduction of such rules?

We refer to the information given under question 2.6. and 3.7. As far as the Danish Radio- and Television Board is informed, the Danish legislator has not considered it appropriate to define binding rules related to financial contribution. Relevant information directed to the relevant service providers combined with the intended code as described above is assessed to be appropriate measures to achieve the requirements regarding Article 13.

5. If you use a different method for the promotion of European works in on-line services in the framework of Article 13 apart from the methods listed (financial contribution/share in the catalogue/prominence tools), please provide more detailed information regarding that method.

At this point, no different methods are used.

6. Regarding the different methods mentioned above, which of them do you consider as most efficient?

The promotion of share should be considered the most efficient method. Prominence tools might have positive effects, too, but due to the lack of concrete experience and data in this field, the Board has no certain basis for this assumption.

7. Which one of the listed three methods do you consider as most burdensome for operators / which one imposes the lightest burden?

The operators are likely to have very little interest in sharing information on financial contribution, since this kind of information e.g. could be considered as confidential information on trade secrets etc. Binding share requirements clearly involve the opt-out of products, which might be more attractive to the providers from a profit-related view. Prominence tools are not to be considered to have direct financial impact, but on the other hand involve interference in the operators' editorial freedom. Ranking of the three methods therefore is difficult. A combination of reasonable guidelines on all three methods and acceptance of intentions to uphold/ increase the prominence of European works by those

of these means, which the providers themselves consider to be most appropriate in their respective business situation, seem to be preferable to binding requirements.

8. According to your experience in monitoring the fulfilment of such obligations, are there special difficulties regarding monitoring?

Due to the information given above, the Board has no specific recommendations regarding continuous monitoring. The data given in connection with the Board's report to the Commission regarding 2009-2010 has shown that all of the responding providers preferred to provide information on the share of European works. As mentioned above, the numbers in the reporting showed, that 24 out of the 29 suppliers who responded, reported the extent of their European services to be in the range of 80-100 % of their total supply. So far, the Danish Radio- and Television Board therefore have the impression, that European works are well represented in audiovisual on-demand services under Danish jurisdiction.

9. Please provide information regarding the view of VoD providers regarding such obligations. (What are their experiences in that regard / which do they consider as most efficient in their practice / which do they favour / do they have specific practical problems in implementing them?) Please do not hesitate to forward this questionnaire also to VoD providers and integrate their potential views in your answers to the questionnaire.

The Board has no information on the view of VoD providers regarding such obligations at this point.

10. Please indicate whether you agree to share your answers to this questionnaire with other Members of the Regulators Group.

The Board agrees to share the given answers with other Members of the Regulators Group.