

**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.

**It is necessary to say that the Andalusia's Audiovisual Council (CAA) exercises his functions in the audiovisual area of the mass media, so much the managed ones directly for the Administration of the Junta de Andalucía as the managed ones by virtue of any licence granted by the same one. Nowadays, in the CAA action's area only there are services of audio-visual television communication on line.**

**Therefore, the CAA neither exercises competitions on any lender of service on demand audiovisual media service, since any issues exclusively in the territory of the Autonomous Community of Andalusia, so that, there aren't controls or experience in this matter.**

**As for the legislative modifications or the adoption of measures for the application of the article 13 DSCA, is necessary to say that the Spanish legislator, on having transposed the DSCA, has chosen for the following methods of promotion:**

- a) **The obligation to contribute to the financing of European works - in the lenders of service of audio-visual television communication of state or autonomous coverage – is**

**concrete in the annual contribution to the early financing of the European production of cinematographic movies, movies and series for television, with 5 out 100 of the income earned in the previous exercise in conformity with the operating account.**

- b) The obligation of the media audiovisual service of a catalogue of programs to reserve to European works 30 % of the catalogue, as the previous one, is imposed on the media audiovisual services of state and autonomous coverage. Of this percentage, the half is reserved to Spanish works. Apart from the transposition of the European regulation other measures have not been adopted in order the application of the article 13 DSCA.**

## **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.)

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.).

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?

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.

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

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?

## **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.)

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?

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).

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

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?

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.

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?

**As for the exigency of an obligatory percentage of European works in the catalogue and as for the use of the tool of the prominence, as it**

has been said previously, the CAA neither realizes controls in this regard nor has an experience in this field, therefore he lacks the requested information.

**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.)

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 it (re) is attributed to them.

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).

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.

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?

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

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?

As for the financial obligation of the lenders of service of audio-visual television communication, the CAA only exercises functions respect of linear lenders for the exposed motives. Nevertheless, the regulation contained in the LGCA belongs applicable to all the lenders of service of audio-visual communication and it is required that the lenders of service of audio-visual communication contribute to the early financing of audio-visual European works with a percentage of his income in conformity with his operating account.

**As for the financial obligation of the lenders of service of audio-visual television communication, the CAA only exercises functions respect of audiovisual media service on line for the exposed motives. Nevertheless, the regulation contained in the LGCA belongs applicable to all the audiovisual media service and it is required that they**

contribute to the early financing of audio-visual European works with a percentage of his income in conformity with his operating account. The media service are forced to promote the production of audio-visual European works. Concretely, the art. 5.3 the first paragraph of de national law, LGCA, establishes that " the audiovisual media service television of state or autonomous coverage will have to contribute annually to the early financing of the European production of cinematographic movies, movies and series to television, as well as documentaries and movies and series of animation, with 5 out 100 of the income earned in the previous exercise in conformity with his operating account, correspondents to the channels in those who issue these audio-visual products, less than seven years from his date of production. For the public media service of state or autonomous coverage this obligation will be of 6 out 100 ".

This financial contribution for the promotion of audio-visual European works is realized by the lenders of service of a direct way, and is calculated on the income, with independence of which benefits or losses have been obtained during the exercise.

The obligation is regulated in the RD 1652/2004, of July 9, by which there was approved the Regulation that regulates the obligatory investment for the early financing of full-length films and cinematographic shorts and movies for television, Europeans and Spanish.

One of the limitations is that the financing must be early, or by direct participation in its production or by acquisition of the rights of exploitation of the audio-visual works; therefore, to these effects the acquisition of rights is not considered to be a promotion of the European production a posteriori.

The obligation of financing also grants a preeminence to the audio-visual cinematographic works since, as minimum, 60 % of the percentage that has to be destined to the financing (75 % in case of the public lenders) will have to devote to cinematographic movies of any kind.

To promote the production of audio-visual Spanish works, 60 % of this amount will be destined to the financing production in someone of the official languages of Spain; and at least the half of this amount - for the promotion of producers' audio-visual works that are not linked of stable form by the lender - must be applied to works of independent producers. The rest of the percentage that has to be invested can devote to audio-visual television productions.

The obligation of financing only is exigible to the media audiovisual service on line, to the lenders of service of electronic communication that there spread channels of television and the media audiovisual services of catalogues of programs, who issue someone of the

following audio-visual products: full-length films and cinematographic shorts, movies for television, miniseries of television and series of television - providing that they have a minor antiquity to seven years from his date of production - and only I concern of the income obtained by the channels in which these products are issued.

In the national law (LGCA) it is found that for the media audiovisual services of catalogues, which obligation of investment avenges derivative of the emission, in sole right or in a percentage superior to 70 % of his total time of annual emission, of the only type of contents that are cinematographic movies, series of television, productions of animation or documentary, they will be able to invest only in this type of contents providing that they materialize in photochemical support or in digital support of high definition.

Finally, the control and follow-up of this obligation of financial contribution comes regulated in the RD 1652/2004, and indicates that the CAA must send to the competent organ of the Administration of the State a specific report on the fulfilment, on the part of the operators subject to his area of action, of the obligation of early financing of audio-visual European works.

For the adoption of this report the CAA it requests information the lenders of service of audio-visual communication. The above mentioned information accompanies of supporting documentation of the income and of the effected financing.

The last information of the CAA of the early financing made by the public media television in Andalusia are the following ones:

Income	46.096.886,73€
European works	0.00€
Spanish works	8.093.406,00€
Cinema	931.337,00€
Independent producer	931.337,00€
TV films	865.521,00€
Series TV	6.296.584,00€
Investment	8.093.406,00€

**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.

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

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

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

**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.

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

**The other questions, as the CAA, at the moment, hasn't competitions on media audiovisual on demand, because doesn't exist any that operates in sole right in our territory, we cannot declare in the matter.**