



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

A7-0262/2012

25.7.2012

REPORT

on the online distribution of audiovisual works in the European Union
(2011/2313(INI))

Committee on Culture and Education

Rapporteur: Jean-Marie Cavada

CONTENTS

| | Page |
|---|-------------|
| MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION | 3 |
| EXPLANATORY STATEMENT..... | 16 |
| OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY | 18 |
| OPINION OF THE COMMITTEE ON LEGAL AFFAIRS | 22 |
| RESULT OF FINAL VOTE IN COMMITTEE | 27 |

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the online distribution of audiovisual works in the European Union (2011/2313(INI))

The European Parliament,

- having regard to Article 167 of the Treaty on the Functioning of the European Union,
- having regard to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on 20 October 2005,
- having regard to Article 21 of the Charter of Fundamental Rights of the European Union, in accordance with which the cultural and creative sectors make a significant contribution in the fight against every form of discrimination, including racism and xenophobia,
- having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)¹,
- having regard to Article 8 of the Charter of Fundamental Rights of the European Union, whereby the protection of personal data must be guaranteed,
- having regard to Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007)²,
- having regard to the Recommendation of the European Parliament and of the Council of 16 November 2005 on film heritage and the competitiveness of related industrial activities³,
- having regard to the Commission Recommendation of 24 August 2006 on the digitisation and online accessibility of cultural material and digital preservation⁴,
- having regard to the Commission communication of 3 March 2010 entitled ‘Europe 2020: A strategy for smart, sustainable and inclusive growth’ (COM(2010)2020),
- having regard to the Commission communication of 26 August 2010 entitled ‘A Digital Agenda for Europe’ (COM(2010)0245),

¹ OJ L 95, 15.4.2010, p. 1.

² OJ L 327, 24.11.2006, p. 12.

³ OJ L 323, 9.12.2005, p. 57.

⁴ OJ L 236, 31.8.2006, p. 28.

- having regard to its resolution of 12 May 2011 on unlocking the potential of cultural and creative industries¹,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Culture and Education and the opinions of the Committee on Industry, Research and Energy and the Committee on Legal Affairs (A7-0262/2012),
- A. whereas the digital age, by nature, offers great opportunities for creating and disseminating works, but also presents enormous challenges;
 - B. whereas market progress has in many ways created the necessary growth and cultural content, in line with the objectives of the single market;
 - C. whereas there is more consumer content available today than ever before;
 - D. whereas it is essential to make the European audiovisual sector more competitive by supporting online services while also promoting European civilisation, linguistic and cultural diversity and media pluralism;
 - E. whereas copyright is a vital legal instrument which grants rights-holders certain exclusive rights and protects those rights, allowing the cultural and creative industries to grow and prosper financially while also helping to safeguard jobs;
 - F. whereas changes to the legal framework aimed at facilitating the acquisition of rights would encourage the free movement of works in the EU and help to strengthen the European audiovisual industry;
 - G. D. whereas European broadcasters play a crucial role in the promotion of the European creative industry and protection of cultural diversity, and whereas broadcasters provide funding for over 80 % of original European audiovisual content;
 - H. whereas cinema exhibition continues to account for a large proportion of film revenue and has a considerable impact on the success of films on video-on-demand platforms;
 - I. whereas Article 13(1) of the Audiovisual Media Services Directive provides the basis for introducing funding and promotion commitments for on-demand audiovisual media services, as they too play a crucial role in the promotion and protection of cultural diversity;
 - J. whereas European broadcasters operating in a digital, convergent, multimedia multi-platform environment need flexible, future-oriented rights clearance systems that make effective copyright clearance possible even in a one-stop shop. whereas flexible rights clearance systems of this kind have been in place in the Nordic countries for decades;
 - K. whereas it is essential to ensure the development of a diverse range of attractive, legal online content and further to facilitate and ensure the easy distribution of such content

¹ Texts adopted, P7_TA(2011)0240.

by keeping obstacles to licensing, including cross-border licensing, at an absolute minimum; also stresses the importance of making content easier to use for consumers, particularly as regards payment;

- L. whereas consumers are demanding access to an ever-wider choice of online films, regardless of the platform's geographical location;
- M. whereas audiovisual works are already being distributed across borders in Europe in accordance with pan-European licences acquired on a voluntary basis, and whereas their further development may be one of the avenues to explore, provided that the corresponding economic demand exists; whereas due recognition must be given to the fact that companies also have to take into account the various linguistic and cultural preferences of European consumers, which reflect the diverse choices of EU citizens in the consumption of audiovisual works in the internal market;
- N. whereas the online distribution of audiovisual products is an excellent opportunity to enhance knowledge of European languages, and whereas this objective can be achieved through original versions and the possibility of having audiovisual products translated into a great variety of languages;
- O. whereas it is essential to ensure legal certainty for both rights-holders and consumers with regard to the application of authors' and neighbouring rights in the European digital area, through greater coordination of legal rules between Member States;
- P. whereas strengthening the legal framework for the audiovisual sector in Europe contributes to further protection of freedom of expression and thought, reinforcing the democratic values and principles of the EU;
- Q. whereas specific action needs to be taken to preserve the European cinematographic and audiovisual heritage, in particular by encouraging the digitisation of content and making it easier for citizens and users to access Europe's film and audiovisual heritage;
- R. whereas the introduction of a system for identifying and labelling works would help to protect rights-holders and restrict unauthorised use;
- S. whereas it is absolutely essential to preserve net neutrality in information and communication networks and guarantee the technology-neutral design of media platforms and players with a view to ensuring the availability of audiovisual services, and to promote freedom of expression and media pluralism in the European Union and take account of technological convergence;
- T. whereas there can be neither sustainable creation nor cultural diversity in the absence of either authors' rights that protect and reward creators, or legally watertight access to the cultural heritage for users; whereas new business models should incorporate effective licensing systems, continued investment in the digitisation of creative content, and easy access for consumers;
- U. whereas a large number of violations of authors' rights or related intellectual property rights stem from the potential audience's understandable need for new audiovisual

content under simple and fairly priced conditions, and whereas this demand has not yet been sufficiently fulfilled;

- V. whereas adjustments to the realities of the digital age, particularly those intended to prevent relocations resulting from a desire to find the legislation offering the least possible protection, need to be encouraged;
- W. whereas fairness demands that all contracts should provide for fair remuneration for authors for all forms of exploitation of their works, including online exploitation;
- X. whereas it is urgent that the Commission propose a directive on collective rights management and collecting societies in order to increase confidence in collecting societies by introducing measures aimed at enhancing efficiency, significantly improving transparency and promoting good governance and efficient dispute resolution;
- Y. whereas collective rights management is an essential tool for broadcasters, given the high number of rights they need to clear daily, and should therefore provide for efficient licensing schemes for the online use of *on-demand* audiovisual content;
- Z. whereas the arrangements for taxing cultural goods and services should be adapted to the digital age;
- AA. whereas the principle of media chronology allows an overall balance in the audiovisual sector, ensuring efficient pre-financing of audiovisual works;
- AB. whereas the principle of media chronology is encountering increasing competition owing to the growing availability of digital works and the possibilities of instant dissemination afforded by our advanced information society;
- AC. whereas the Union needs to take a coherent approach to technological issues by promoting the interoperability of systems used in the digital age;
- AD. whereas the legislative and fiscal framework should be favourable to enterprises that promote online distribution of audiovisual products with an economic value;
- AE. whereas access to the media for people with disabilities is of major importance and should be facilitated, with programmes being adapted to people with disabilities;
- AF. whereas there is a crucial need to step up research and development in order to develop techniques for the automated management of services for people with disabilities, in particular through hybrid broadcasting;
- 1. Acknowledges the fragmentation of the online market, which is characterised by, for example, technological barriers, the complexity of licensing procedures, differences in methods of payment, the lack of interoperability for crucial elements such as eSignature, and variations in the rates of certain taxes applicable to goods and services, including VAT; believes, therefore, that there is currently a need for a transparent, flexible and harmonised approach at European level in order to advance towards the digital single

market; emphasises that any proposed measure should seek to reduce the administrative burdens and transaction costs associated with the licensing of content;

Legal content, accessibility and collective rights management

2. Stresses the need to make legal content more attractive in terms of both quantity and quality, and more up-to-date, and to improve the online availability of audiovisual works, including both subtitled works and works in all the official languages of the EU;
3. Underlines the importance of offering content with subtitles in as many languages as possible, especially via video on-demand services;
4. Stresses that there is a growing need to promote the emergence of an attractive, legal online supply of audiovisual content and to encourage innovation, and that it is therefore essential for new methods of distribution to be flexible in order to allow the emergence of new business models and to make digital goods accessible to all EU citizens, regardless of their Member State of residence, with due regard for the principle of net neutrality;
5. Stresses that digital services, such as video streaming, should be made available to all EU citizens irrespective of the Member State in which they are located; calls on the Commission to request that European digital companies remove geographical controls (e.g. IP address blocking) across the Union and allow the purchase of digital services from outside the consumer's Member State of origin; asks the Commission to draft an analysis of the application of the Cable and Satellite Directive¹ to digital distribution;
6. Considers that greater attention should be given to improving the security of online distribution platforms, including online payments;
7. Stresses the necessity of developing alternative and innovative micropayment systems, such as payment by text message or applications for legal platforms providing online services, so as to facilitate their use by consumers;
8. Stresses that problems associated with online payment systems, such as the lack of interoperability and the high costs of micropayment for consumers, should be tackled with a view to developing simple, innovative and cost-effective solutions of benefit to both consumers and digital platforms;
9. Calls for the development of new solutions in the area of user-friendly payment systems, such as micropayments, and of systems facilitating direct payments to creators, thereby benefiting both consumers and authors;
10. Stresses that online use can represent a real opportunity for better dissemination and distribution of European works, particularly audiovisual works, in conditions whereby the legal supply of such works can develop in an environment of healthy competition which effectively tackles the illegal supply of protected works;

¹ Directive 93/83/EEC, OJ L 248, 6.10.1993, p. 15.

11. Promotes the development of a rich and diverse legal supply of audiovisual content, in particular through more flexible release windows; stresses that rights-holders should be able to decide freely when they wish to launch their products on different platforms;
12. Emphasises the need to ensure that the current system of release windows is not used as a means of blocking online exploitation to the detriment of small producers and distributors;
13. Welcomes the Commission's decision to implement the preparatory action adopted by Parliament for testing new modes of distribution based on complementarity between platforms as regards the flexibility of release windows;
14. Calls for support for strategies enabling European audiovisual SMEs to manage digital rights more effectively and thereby reach a wider audience;
15. Calls on all Member States, as a matter of urgency, to implement Article 13 of the Audiovisual Media Services Directive in a prescriptive manner and to introduce funding and promotion commitments for on-demand audiovisual media services, and on the Commission to provide Parliament with a detailed report on the current status of implementation as per Article 13(3) without delay;
16. Recalls that, for the creation of a single internal digital market in Europe, it is essential to establish pan-European regulations on the collective management of authors' rights and related intellectual property rights so as to put a stop to the continuing various amendments to legislation in the Member States that make cross-border rights management increasingly difficult;
17. Supports the creation of a legal framework designed to facilitate digitisation and the cross-border dissemination of orphan works on the digital single market, this being one of the key actions identified in the Digital Agenda for Europe, which is part of the Europe 2020 strategy;
18. Observes that the development of cross-border services is entirely possible, provided that business platforms are prepared to acquire, by contractual means, the rights to exploit one or more territories, since it must be remembered that territorial systems are natural markets in the audiovisual sector;
19. Stresses the need to create legal certainty as to which legal system applies for the clearance of rights in the event of cross-border distribution, by proposing that the applicable law should be that of the country where an enterprise carries out its main business and generates its main revenue;
20. Reaffirms the objective of intensified and efficient cross-border online distribution of audiovisual works between Member States;
21. Suggests adopting a comprehensive approach at EU level which should involve greater cooperation between rights-holders, online distribution platforms and internet service providers, so as to facilitate user-friendly and competitive access to audiovisual content;

22. Emphasises the need to ensure flexibility and interoperability in the distribution of audiovisual works by digital platforms, with a view to expanding the legal online supply of audiovisual works in response to market demand, and to foster cross-border access to content originating from other Member States while ensuring respect for copyright;
23. Welcomes the new Creative Europe programme proposed by the Commission, which emphasises that online distribution is also having a massive, positive impact on the distribution of audiovisual works, especially in terms of reaching new audiences in Europe and beyond and enhancing social cohesion;
24. Stresses the importance of net neutrality in order to guarantee equal access to high-speed networks, which is crucial to the quality of legitimate online audiovisual services;
25. Emphasises that the digital divide between Member States or regions of the EU represents a serious barrier to the development of the digital single market; calls, therefore, for the expansion of broadband internet access throughout the EU with a view to stimulating access to online services and new technologies;
26. Recalls that, for the purpose of commercial exploitation, rights are transferred to the audiovisual producer, who relies on the centralisation of exclusive rights granted under copyright law to organise the financing, production and distribution of audiovisual works;
27. Recalls that commercial exploitation of the exclusive rights of ‘communication to the public’ and ‘making available to the public’ is aimed at generating financial resources, in the event of commercial success, in order to finance the future production and distribution of projects, thus promoting the availability of a diversified and ongoing supply of new films;
28. Calls on the Commission to present a legislative initiative for the collective management of copyright, aimed at ensuring better accountability, transparency and governance on the part of collective rights management societies, along with efficient dispute resolution mechanisms, and at clarifying and simplifying licensing systems in the music sector; stresses, in this regard, the need to operate a clear distinction between licensing practices for different types of content, notably between audiovisual/cinematographic and musical works; recalls that the licensing of audiovisual works is conducted on the basis of individual contractual agreements together with, in some cases, the collective management of remuneration claims;
29. Stresses that the Commission report on the application of Directive 2001/29/EC¹ identified differences in the implementation in Member States of the provisions of Articles 5, 6 and 8, leading to differing interpretations and decisions by the courts of the Member States; points out that these have become part of the specific body of case law relating to the audiovisual sector;

¹ OJ L 167, 22.6.2001, p. 10.

30. Requests the Commission to continue its rigorous monitoring of the application of Directive 2001/29/EC and its periodic reporting of findings to Parliament and the Council;
31. Invites the Commission to revise Directive 2001/29/EC, after consulting all the relevant stakeholders, in such a way that the provisions of Articles 5, 6 and 8 are worded more precisely, with a view to ensuring the harmonisation at Union level of the legal framework for copyright protection in the information society;
32. Supports the establishment of consistent European rules on the good governance and transparency of collecting societies and on efficient dispute resolution mechanisms;
33. Stresses that simplified clearance and aggregation, especially of musical rights in audiovisual works for online distribution, would promote the internal market, and urges the Commission to take this into consideration as appropriate in the legal act on collective rights management that has been announced;
34. Points out that the continuing convergence of the media, not only in terms of authors' rights, but also in terms of entertainment law, requires new problem-solving approaches; urges the European Commission to check to what extent various regulations for linear and non-linear services in Directive 2010/13/EU on audiovisual media services are still up-to-date, taking the latest technological developments into consideration;
35. Believes that restrictions on advertising for linear children's ranges, on news and information programmes, are reasonable despite the increasingly obsolete distinction between linear and non-linear selections; suggests, however, that consideration be given to new forms of cross-programme and cross-platform clearing systems, with the aid of which interest could be awoken in high-quality content, which would also increase the linear programme quality and the online variety without burdening the revenue of private broadcasters;
36. Stresses that the option of territorial production and distribution schemes should continue to apply to the digital environment, since this form of organisation of the audiovisual market appears to serve as the basis for financing European audiovisual and cinematographic works;
37. Calls on the Commission to present an analysis of whether the principle of mutual recognition could be applied to digital goods in the same manner as to physical goods;

Identification

38. Takes the view that new technologies could be used to facilitate the clearing of rights; welcomes, in this connection, the International Standard Audiovisual Number (ISAN) initiative, which makes it easier to identify audiovisual works and their rights-holders; calls on the Commission to consider implementing measures facilitating wider use of the ISAN system;

Unauthorised use

39. Calls on the Commission to afford internet users legal certainty when they are using streamed services and to consider, in particular, ways to prevent the use of payment systems and the funding of such services through advertising on pay platforms offering unauthorised downloading and streaming services;
40. Calls on the Member States to promote respect for authors' and neighbouring rights and to combat the provision and distribution of unauthorised content, including via streaming;
41. Draws attention to the upsurge in social networking platforms offering internet users the chance to provide financial support for the production of a film or documentary, which makes them feel like an integral part of its making, but stresses, nonetheless, that in the short term this type of funding is unlikely to replace traditional sources of funding;
42. Recognises that, where legal alternatives do exist, online copyright infringement remains an issue and therefore the legal online availability of copyrighted cultural material needs to be supplemented with smarter online enforcement of copyright while fully respecting fundamental rights, notably freedom of information and of speech, protection of personal data and the right to privacy, along with the 'mere conduit' principle;
43. Calls on the Commission to promote legal certainty with a revision of Directive 2004/48/EC, designed for the analogue market, in order to introduce necessary modifications to that market in order to develop effective solutions for the digital market;

Remuneration

44. Recalls the necessity of ensuring the proper remuneration of rights-holders for online distribution of audiovisual content; notes that, although this right has been recognised at European level since 2001, there still is a lack of proper remuneration for works made available online;
45. Considers that this remuneration should aim to facilitate artistic creation, to increase European competitiveness and to take into account the characteristics of the sector, the interests of the different stakeholders and the need for significantly simplified licensing procedures; calls on the Commission to stimulate bottom-up solutions in cooperation with all stakeholders in order further to develop specific EU legislation;
46. Maintains that it is essential to guarantee authors and performers remuneration that is fair and proportional to all forms of exploitation of their works, especially online exploitation, and therefore calls upon the Member States to ban buyout contracts, which contradict this principle;
47. Calls on the Commission urgently to present a study considering disparities in the different remuneration mechanisms for authors and performers which are in use at the national level, *in order to draw up a list of best practices*;

48. Calls for the bargaining position of authors and performers vis-à-vis producers to be rebalanced by providing authors and performers with an unwaivable right to remuneration for all forms of exploitation of their works, including ongoing remuneration where they have transferred their exclusive 'making available' right to a producer;
49. Calls for measures to be taken to guarantee fair remuneration for rights-holders when distributing, retransmitting or rebroadcasting audiovisual works;
50. Maintains that the best means of guaranteeing decent remuneration for rights-holders is by offering a choice, as preferred, among collective bargaining agreements (including agreed standard contracts), extended collective licences and collective management organisations;

Licensing

51. Points out that the European copyright *acquis communautaire* does not *per se* preclude voluntary multi-territorial or pan-European licensing mechanisms, but that cultural and language differences between Member States, along with variations in national rules, including those unrelated to intellectual property, necessitate a flexible and complementary approach at European level in order to advance towards the digital single market;
52. Points out that multi-territorial or pan-European licensing mechanisms should remain voluntary and that linguistic and cultural differences between Member States, along with variations in national rules unrelated to copyright law, carry their own specific challenges; believes, therefore, that a flexible approach regarding pan-European licensing must be adopted, while protecting rights-holders and progressing towards the digital single market;
53. Takes the view that, if sustainable multi-territorial licensing can be encouraged and promoted in the digital single market for audiovisual works, this should facilitate market-driven initiatives; stresses that digital technologies provide new and innovative ways to customise and enrich the supply of such works for each market and to meet consumer demand, including for tailored cross-border services; calls for better exploitation of digital technologies, which should constitute a springboard for both differentiation and multiplication of the legitimate supply of audiovisual works;
54. Believes that there is a need for up-to-date information on licensing conditions, licence-holders and repertoires and for comprehensive studies at European level in order to facilitate transparency, identify where problems arise and find clear, efficient and appropriate mechanisms for solving them;
55. Points out that the administration of audiovisual rights for the commercial exploitation of works in the digital age could be made easier if Member States were to promote effective and transparent licensing, including voluntary extended collective licensing, where such procedures are currently lacking;

56. Observes that it would be useful for culture workers and Member States to negotiate the implementation of measures enabling public records to benefit fully from digital technology for works that form part of the heritage, especially as regards access to remote digital works on a non-commercial scale;
57. Welcomes the Commission's consultation triggered by the publication of the Green Paper and its acknowledgment of the specificities of the audiovisual sector with regard to licensing mechanisms, which are of major importance for the continued development of the sector in terms of promoting both cultural diversity and a strong European audiovisual industry in the digital single market;

Interoperability

58. Calls on the Member States to ensure that collective rights management is based on effective, functional and interoperable systems;
59. Calls on the Commission to consider ways to encourage network operators to standardise their technical tools and reverse the current trend of removing responsibility from these operators regarding consumer protection, implementation of intellectual property rights and ensuring Internet privacy;

VAT

60. Stresses the importance of initiating a debate on the issue of the divergent VAT rates applied in Member States and calls on the Commission and the Member States to coordinate their action in this area;
61. Stresses that consideration should be given to applying a reduced rate of VAT to the digital distribution of cultural goods and services in order to eliminate the discrepancies between online and offline services;
62. Stresses the need to apply the same VAT rate to cultural audiovisual works sold online and offline; takes the view that the application of reduced VAT rates for online cultural content sold by a provider established in the EU to a consumer resident in the EU would boost the attractiveness of digital platforms; recalls, in this connection, its resolutions of 17 November 2011 on the modernisation of VAT legislation in order to boost the digital single market¹ and of 13 October 2011 on the future of VAT²;
63. Calls on the Commission to implement a legal framework for non-EU online audiovisual services where these are aimed directly or indirectly at the EU public, so that they are subject to the same requirements as EU services;

Protection and promotion of audiovisual works

64. Draws attention to the conditions under which the task of restoring and conserving audiovisual works and making them available for cultural and educational purposes is carried out in the digital age, and stresses that special consideration should be given to

¹ P7_TA(2011)0513.

² P7_TA(2011)0436.

this issue;

65. Encourages the Member States to implement the Audiovisual Media Services Directive and recommends that they monitor how European works, particularly films and documentaries, are actually presented and promoted through the different audiovisual media services accessible to the public, and stresses the need for closer cooperation between regulatory authorities and film funding organisations;
66. Calls on the Commission to find mechanisms for encouraging access to archived audiovisual material held by Europe's film heritage institutions; notes that, for reasons often linked to diminishing consumer appeal and limited shelf life, a substantial share of European audiovisual material is unavailable commercially;
67. Calls on the Member States and the Commission to promote solutions aimed at supporting the digitisation, preservation and educational availability of these works, including across borders;
68. Notes the importance of the 'Europeana' online library and believes that greater attention should be given by the Member States and cultural institutions to ensuring its accessibility and visibility;
69. Considers that the digitisation and preservation of cultural resources, along with enhanced access to such resources, offer great economic and social opportunities and represent an essential condition for the future development of Europe's cultural and creative capacities and for its industrial presence in this field; supports, therefore, the Commission's Recommendation of 27 October 2011 on the digitisation and online accessibility of cultural works and digital preservation¹, along with the proposal to create an up-to-date package of measures to that end;

Education

70. Stresses the importance of promoting digital skills and media literacy for all EU citizens, including elderly people and those with disabilities, such as the hard of hearing, and of reducing the digital gap in society, as these aspects play an essential role for societal participation and democratic citizenship; recalls the important role played by public service media in this regard as part of their public-service missions;
71. Reaffirms the crucial importance of integrating new technologies into national educational programmes, and the particular importance of educating all EU citizens, of all ages, in media and digital literacy in order to develop and benefit from their skills in these areas;
72. Highlights the need for European and national education campaigns to raise awareness of the importance of intellectual property rights and of the available legal channels through which audiovisual works are distributed online; points out that consumers should be properly informed about any issues relating to intellectual property rights that may arise when using file-sharing services in the context of cloud-computing services;

¹ OJ L 283, 29.10.2011, p. 39.

73. Draws attention to the need to communicate more strongly to the public the importance of copyright protection and the related need for fair remuneration;
74. Emphasises the need to take into account the granting of a special status to institutions with an educational purpose as regards online access to audiovisual works;

MEDIA 2014-2020

75. Points out that the MEDIA programme has established itself as an independent brand and that it is crucial to pursue an ambitious MEDIA programme for 2014–2020 which is in the same spirit as the current programme;
76. Stresses that it is vital for MEDIA to continue to exist as a specific programme focusing solely on the audiovisual sector;

o

o o

77. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

In the audiovisual and cinema sectors, the artistic input of creators is not a simple matter, as this is at one and the same time an art and an industry. It is therefore important to create both opportunities and the necessary means for disseminating European films, as the European Union must above all be geared towards education and culture. It is our duty to teach that to young people.

The future development of the information society must be focused on creating the audiovisual material that is essential for the growth of this market.

The cultural and creative industries provide a significant number of jobs in the Union and their economic contribution in terms of added value amounts to 2.5 % of GDP, equal to that of the automotive sector.

It is also worth noting that the economic model for the market in audiovisual works is based on different sales territories, each with its own specific release windows for the various media. This system must not be undermined because it ensures a good commercial balance between all of the partners in the sector.

In the EU, the production, funding and distribution of audiovisual works are handled by a complex network of large, medium-sized and small specialist enterprises, each with its own particular characteristics.

The single market works, and offers new prospects and opportunities, both to consumers and to creators and service providers. The aim of EU policy must be to create an environment conducive to the development of universally accessible legal content, to innovation and to creation.

Before going any further, it is essential to emphasise the difference between the concept of 'authors' rights', which are connected with the author as an individual, and the concept of 'copyright', which is a right of exploitation, linked to the work itself.

Our institution now unequivocally acknowledges the need to protect authors' rights, and I believe that we must now focus our efforts on ensuring legal certainty in the online environment in Europe and ensure that there is no inequality of treatment between online and offline services.

With a view to simplifying the process of acquiring rights, a very strong case may be made for the introduction of an international system for identifying cinematographic, audiovisual and multimedia works.

Following the 1989 Television Without Frontiers Directive, there appeared to be a very real prospect of inundating the whole of Europe, via satellite and cable, with rich and varied European audiovisual content. Twenty-five years later, and notwithstanding the digital revolution, we are obliged to recognise that this has not happened.

As the Commission has pointed out, the majority of audiovisual media services are targeted mainly at a national audience or a particular linguistic area. This is why it would be inappropriate to impose a legal requirement to negotiate multi-territorial, multilingual or multi-platform licences, since the commercial demand for such licences is extremely limited at the market's current stage of development. Imposing a pan-European licence would merely make it easier for the players with the greatest purchasing power to monopolise the market to the detriment of many SMEs, which form the backbone of the audiovisual and cinema industry in Europe.

The issue of net neutrality is of fundamental importance in this new online environment. It should be noted that the number of audiovisual service providers using the Internet as a means of distributing their content and services is steadily increasing. The principle of net neutrality is of key importance in helping them supply their content and services to the largest possible number of people. We must therefore ensure that legitimate general-interest objectives such as media pluralism and cultural diversity are achieved.

There is an equally pressing need to adapt European law to the realities of the Internet and the digital age. It is clear that, in today's digital environment, using the place where a service provider is established as the criterion for determining the place of supply would tend to encourage relocation. Consideration should therefore be given to whether it would not be more advisable to regard the country where the establishment carries out its main business as the place of supply.

It must be emphasised that, although it does not seem advisable to impose mandatory collective rights management in the audiovisual sector in order to avoid double payment, this being the producer's role, this does not make it any less essential to call strongly for collective agreements to be signed at European level between authors' representatives and the platforms that exploit the works over the Internet, so that authors can continue to fully exercise their rights.

However, it is worth noting that in the age of Smart TV, performers in many cases receive a trifling amount of remuneration, with the rates being set by contracts covering the secondary exploitation of their work that they sign with audiovisual producers.

In view of the current debate on this issue, it should also be emphasised that streaming must be regulated, and that it is absolutely essential to find means of blocking access to pay platforms offering unauthorised content.

With the imminent development of smart terminals, consumers will find it even easier to obtain direct access to audiovisual content via search engines. Given the plethora of content, the concern is that the links given the highest ranking by referral sites, which are inevitably controlled by the American giants, will direct consumers to non-domestic and non-European sites or services.

26.4.2012

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on Culture and Education

on online distribution of audiovisual works in the EU
(2011/2313(INI))

Rapporteur: Maria Badia i Cutchet

SUGGESTIONS

The Committee on Industry, Research and Energy calls on the Committee on Culture and Education, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Acknowledges the fragmentation of the on-line market, marked for example by technological barriers, complexity of licensing procedures, differences in methods of payment, lack of interoperability for crucial elements such as eSignature, and variations in certain taxes which apply to goods and services including VAT rates; believes, therefore, that there is a present need for a transparent, flexible and harmonised approach at European level in order to advance towards the digital single market; underlines that any proposed measure should take into account the reduction of administrative burdens and transaction costs in connection with the licensing of content;
2. Stress that digital services, such as video streaming services, should be made available to all EU citizens irrespective of the Member State in which they are located; calls on the Commission to request that European digital companies remove geographical controls (e.g. IP address blocking) for the whole Union and allow the purchase of digital services from outside the Member State of origin; asks the Commission to draft an analysis of the application of the Cable and Satellite Directive¹ to digital distribution;
3. Asks the Commission to present an analysis of whether the principle of mutual recognition could be applied to digital goods in the same manner as to physical goods;
4. Considers that greater attention should be given to respecting fundamental rights, notably the freedom of information and of speech, the protection of personal data and the right to privacy, and to improving the security of online distribution platforms, including online

¹ Directive 93/83/EEC.

payments;

5. Stresses that there is a growing need to promote the emergence of legal and attractive on-line supply and encourage innovation, and that hence it is essential for new methods of distribution to be flexible in order to allow the emergence of new business models and make digital goods accessible to all EU citizens, regardless of their Member State of residence, and taking into account the principle of net neutrality;
6. Suggests a comprehensive approach at EU level which should involve greater cooperation between rights-holders, online distribution platforms and internet service providers to facilitate user-friendly and competitive access to audiovisual content;
7. Recognises however that, where legal alternatives do exist, piracy remains an issue and therefore the legal online availability of copyrighted cultural material needs to be supplemented with smarter online enforcement of copyright while fully respecting fundamental rights, notably the freedom of information and of speech, protection of personal data and the right to privacy as well as the 'mere conduit' principle;
8. Supports the creation of a legal framework to facilitate digitisation and the cross-border dissemination of orphan works on the digital single market, this being one of the key actions identified in the Digital Agenda for Europe, which is part of the Europe 2020 Strategy;
9. Recalls the importance of the online library Europeana and believes that greater attention should be given by the Member States and cultural institutions to ensuring its accessibility and visibility;
10. Underlines that the digital divide between Member States or regions of the EU represents a serious barrier to the development of the digital single market; therefore calls for the expansion of broadband internet access throughout the EU with a view to stimulating access to online services and to new technologies;
11. Considers that the digitisation and preservation of cultural resources, as well as enhanced access to such resources, offer great economic and social opportunities and represent an essential condition for the future development of Europe's cultural and creative capacities and for its industrial presence in this field; therefore supports the Commission's Recommendation of 27 October 2011 on the digitisation and online accessibility of cultural works and digital preservation, as well as the proposal to create an up-to-date package of measures to that end;
12. Recalls the necessity to ensure the proper remuneration of right-holders for on-line distribution of audiovisual materials; notes that, although this right has been recognised at European level since 2001, there still is a lack of proper remuneration for works being made available online;
13. Considers that this remuneration should aim to facilitate artistic creation, to increase European competitiveness and to take into account the characteristics of the sector, the interests of the different stakeholders and the need for significantly simplified licensing procedures; calls on the Commission to stimulate bottom-up solutions in cooperation with

all stakeholders in order to further develop specific EU legislation;

14. Believes that there is a need for up-to-date information on licensing conditions, licence holders and repertoires and for comprehensive studies at European level in order to facilitate transparency as well as to identify where problems are located and to find clear, efficient and appropriate mechanisms to solve them;
15. Calls upon the Commission to speed up the work on the proposal for a Directive on Collective Rights Management, which should also take into account the specificities of the audiovisual sector, and considers that this proposal should enable harmonisation of transparency and good governance rules;
16. Welcomes the new Creative Europe Programme proposed by the Commission, which underlines that online distribution is also having a massive and positive impact on the distribution of audiovisual works, especially in terms of reaching new audiences in Europe and beyond, and in enhancing social cohesion;
17. Stresses the fact that the Commission report on the application of Directive 2001/29/EC established differences in implementation in the Member States of the provisions of Articles 5, 6 and 8, leading to different interpretations and decisions from the courts of Member States; recalls that these have become part of the specific body of case law;
18. Requests the Commission to continue the rigorous monitoring of the application of Directive 2001/29/EC and the periodic reporting of findings to the European Parliament and Council;
19. Invites the Commission to revise Directive 2001/29/EC, after consulting all the relevant stakeholders, in such a way that the provisions of Articles 5, 6 and 8 are worded more precisely, with a view to ensuring the harmonisation at Community level of the legal framework for copyright protection in the Information Society.

RESULT OF FINAL VOTE IN COMMITTEE

| | |
|---|---|
| Date adopted | 24.4.2012 |
| Result of final vote | +: 47 -: 5 0: 2 |
| Members present for the final vote | Gabriele Albertini, Amelia Andersdotter, Josefa Andrés Barea, Zigmantas Balčytis, Ivo Belet, Bendt Bendtsen, Reinhard Bütikofer, Maria Da Graça Carvalho, Jürgen Creutzmann, Pilar del Castillo Vera, Christian Ehler, Vicky Ford, Gaston Franco, Adam Gierek, Norbert Glante, Robert Goebbels, András Gyürk, Fiona Hall, Edit Herczog, Kent Johansson, Romana Jordan, Krišjānis Kariņš, Lena Kolarska-Bobińska, Judith A. Merkies, Jaroslav Paška, Aldo Patriciello, Vittorio Prodi, Miloslav Ransdorf, Herbert Reul, Jens Rohde, Paul Rübig, Francisco Sosa Wagner, Konrad Szymański, Patrizia Toia, Claude Turmes, Niki Tzavela, Marita Ulvskog, Vladimir Urutchev, Adina-Ioana Vălean, Kathleen Van Brempt, Alejo Vidal-Quadras |
| Substitute(s) present for the final vote | Maria Badia i Cutchet, Yves Cochet, Ioan Enciu, Vicente Miguel Garcés Ramón, Roger Helmer, Jolanta Emilia Hibner, Yannick Jadot, Seán Kelly, Eija-Riitta Korhola, Werner Langen, Zofija Mazej Kukovič, Vladimír Remek, Silvia-Adriana Țicău |

3.5.2012

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Culture and Education

on online distribution of audiovisual works in the EU
(2011/2313(INI))

Rapporteur: Piotr Borys

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Culture and Education, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Welcomes the Commission's consultation triggered by the publication of the Green Paper and its acknowledgment of the specificities of the audiovisual sector with regard to licensing mechanisms, which are of major importance for the continued development of the sector in the context of promoting both cultural diversity and a strong European audiovisual industry in the digital single market;
2. Stresses that online use can represent a real opportunity for better diffusion and distribution of European works, particularly audiovisual works, in conditions where legal supply can develop in an environment of healthy competition which effectively tackles the illegal supply of protected works;
3. Recalls that the commercial exploitation of the exclusive rights of 'communication to the public' and of 'making available to the public' aims at generating financial resources, in case of commercial success, in order to finance the future production and distribution of projects, thus promoting the availability of a diversified and permanent offer of new films;
4. Emphasises the need to ensure flexibility and interoperability in the distribution of audiovisual works by digital platforms, so as to expand the legal online offer of audiovisual works in response to market demand, and to foster cross-border access to content originating from other Member States while ensuring respect for copyright;
5. Highlights the need for European and national education campaigns to raise awareness on the importance of intellectual property rights, as well as on the available legal channels through which audiovisual works are distributed online; points out that consumers should be properly informed about any IPR-related questions that may arise when using file-

sharing under cloud-computing services;

6. Invites the Commission to enable the industry to test innovative means of distribution in order to take advantage of the possible benefits across and between territories and of exploitation windows, notably through the implementation of the preparatory action on circulation of audiovisual works adopted by Parliament in November 2011;
7. Points out that the European copyright 'acquis communautaire' does not per se preclude voluntary multi-territorial or pan-European licensing mechanisms but that cultural and language differences between Member States, as well as variations in national rules, including in those unrelated to intellectual property, necessitate a flexible and complementary approach at European level in order to advance towards the digital single market;
8. Stresses that the option for territorial production and distribution schemes should continue to apply to the digital environment, since this form of organisation of the audiovisual market appears to form the basis of financing of European audiovisual and cinematographic works; in this regard, multiterritorial licensing should remain optional;
9. Takes the view that if sustainable multi-territorial licensing can be encouraged and promoted in the digital single market for audiovisual works, this should facilitate market-driven initiatives; underlines that digital technologies provide new and innovative ways to customise and enrich the offer for each market and to meet consumers' demand, including for tailored cross-border services; calls for better exploitation of digital technologies which should constitute a springboard for both differentiation and multiplication of legitimate offers;
10. Stresses the importance of promoting digital skills and media literacy for all EU citizens, including those with disabilities such as the hard of hearing, as it plays an essential role for societal participation and democratic citizenship; recalls the important role that public service media plays in this regard as part of their public service;
11. Calls on the Commission to present a legislative initiative for the collective management of copyright, aimed at ensuring better accountability, transparency and governance on the part of collective rights management societies, as well as efficient dispute resolution mechanisms, and at clarifying and simplifying licensing systems in the music sector; stresses, in this regard, the need to operate a clear distinction between licensing practices for different types of content, notably between audiovisual/cinematographic and musical works; recalls that the licensing of audiovisual works is conducted on the basis of individual contractual agreements together with, in some cases, collective management of remuneration claims;
12. Calls on the Commission to evaluate the application of the current acquis in the field of copyright, and take into account the implications of the recent decision of the Court of Justice regarding the *Premier League* case¹ and EU-wide access to audiovisual services;

¹ Judgment of 4 October 2011 in Joined Cases C-403/08 and C-429/08 *Football Association Premier League and Others*, not yet reported in the ECR.

13. Points out that the development of cloud-computing services for copyright-protected content can bring new challenges, in terms of, for instance, distinguishing between legal and illegal copies of a music track that consumers may upload; stresses that content should only be available to consumers who have purchased it legally, noting that individual access codes provide an efficient means of ensuring this;
14. Stresses the need to find solutions allowing authors and performers to secure fair and effective distribution of economic returns from the online exploitation of their works;
15. Insists that in the context of online exploitation of audiovisual works, it is important that fair and proportional remuneration be granted to the authors and performers involved, for example by means of individual contracts, collective bargaining agreements or through collective management mechanisms;
16. Stresses that problems associated with online payment systems, such as the lack of interoperability and the high costs of micro-payment for consumers, should be tackled with a view to developing simple, innovative and cost-effective solutions of benefit to consumers and digital platforms;
17. Asks the Commission urgently to present a study to consider the disparities in the different remuneration mechanisms for authors and performers in use at the national *level in order to draw up a list of best practices*;
18. Stresses the need to apply the same VAT rate to cultural audiovisual works sold online and offline; takes the view that the application of reduced VAT rates for online cultural content sold by a provider established in the EU to a consumer resident in the EU would boost the attractiveness of digital platforms; recalls, in this respect, its resolutions of 17 November 2011 on the modernisation of VAT legislation in order to boost the digital single market¹ and of 13 October 2011 on the future of VAT²;
19. Stresses the importance of net neutrality in order to guarantee *equal access to high-speed networks, which is crucial for the quality of legitimate online audiovisual services*;
20. Calls on the Commission to find mechanisms to encourage access to archived audiovisual material held in Europe's film heritage institutions; for reasons often linked to diminishing consumer appeal and limited shelf life, a substantial share of European audiovisual material is unavailable commercially;
21. Calls on Member States and the Commission to promote solutions to support the digitisation, preservation and educational availability of these works, including across borders;
22. Takes the view that new technologies could be used in order to facilitate the clearing of rights; welcomes in this respect the International Standard Audiovisual Number (ISAN) initiative which makes the identification of audiovisual works and of the right holders easier; calls on the Commission to consider implementing measures facilitating wider use

¹ P7_TA-PROV(2011)0513.

² P7_TA-PROV(2011)0436.

of the ISAN system;

RESULT OF FINAL VOTE IN COMMITTEE

| | |
|---|---|
| Date adopted | 26.4.2012 |
| Result of final vote | + : 21 - : 0 0 : 2 |
| Members present for the final vote | Raffaele Baldassarre, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Antonio López-Istúriz White, Jiří Maštálka, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka |
| Substitute(s) present for the final vote | Piotr Borys, Sergio Gaetano Cofferati, Vytautas Landsbergis, Eva Lichtenberger, Axel Voss |

RESULT OF FINAL VOTE IN COMMITTEE

| | |
|---|--|
| Date adopted | 10.7.2012 |
| Result of final vote | +: 26 -: 0 0: 4 |
| Members present for the final vote | Zoltán Bagó, Malika Benarab-Attou, Lothar Bisky, Piotr Borys, Jean-Marie Cavada, Silvia Costa, Santiago Fisas Aixela, Lorenzo Fontana, Mary Honeyball, Petra Kammerevert, Morten Løkkegaard, Emma McClarkin, Emilio Menéndez del Valle, Katarína Nevedálová, Doris Pack, Chrysoula Paliadeli, Marie-Thérèse Sanchez-Schmid, Marietje Schaake, Marco Scurria, Emil Stoyanov, Hannu Takkula, László Tőkés, Helga Trüpel, Marie-Christine Vergiat, Milan Zver |
| Substitute(s) present for the final vote | Ivo Belet, Nessa Childers, Nadja Hirsch, Seán Kelly, Iosif Matula, Mitro Repo |
| Substitute(s) under Rule 187(2) present for the final vote | Evžen Tošenovský |