

## Meeting between European Producers Club and Commissioner OETTINGER

to discuss film industry on 6 of September 2016

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### I. Scene setter

*For European Producers Club:*

*The list of participating stakeholders (see Background for photos and short bios+ organisation's profile).*

- Article 4(1)(b) EPC
- , EPC Article 4(1)(b)
- , Constantin Film AG

*For DG CONNECT:* **TBD**

*For the Cabinet: Anna Herold*

*Estimated duration: 1h (15:30 – 16:30)*

### Objective(s):

- Reiterate that one of the main political objectives of the Commission, as set out in the Communication on a "modern and more European" copyright framework, adopted on 9 December, is allowing wider online availability of content across the EU.
- Confirm the Commission's commitment with the promotion of an efficient and competitive European copyright-based economy in the Digital Single Market and discuss how the Commission can help the film industry to make the most of the opportunities offered by the DSM.
- Reassure EPC that we are aware and we have taken into account the specificities of the European audiovisual sector, in particular as regards the financing of audiovisual works, in our legislative proposals.

### Their Position:

#### On copyright modernisation:

- In the letter sent to you in March 2015 and when you have met EPC, notably in Cannes and Berlinale, the organisation has expressed its concerns, mainly about i) the continuity of the licensing of AV works on a national and/or linguistic basis, ii) the new legal framework will not help to create new jobs and to foster creative diversity in Europe, but will make the financing of independent European productions almost

impossible instead, iii) the need to assess thoroughly the consequences of any change of rules.

#### **On portability:**

- Granting portability on content should be neither a limitation from nor an exemption to the exercise of author's rights. Even if the proposed EC Regulation is forcing the providers to propose portability to their users, it must be subject to contract between the parties. The EPC is in favour of applying portability to content under conditions (through copyright contract conditions, for identified users that are paying for a service and only traveling for a short period of time).

#### **On the AVMSD review (2015 public consultation):**

- EPC supports reinforcing rules for video sharing platforms via the eCommerce Directive as well as in the AVMSD review and would like to see the geographical scope of the AVMSD extended to audio-visual media services established outside the EU that are targeting EU audiences. They support maintaining the status quo of country of origin principle (revising the criteria to establish jurisdiction). As regards the promotion of European works, EPC supports the reinforcement of rules for on-demand services, including those on prominence of European works in catalogues and financial obligations.

#### **Our position:**

##### **On copyright modernisation:**

- Highlight the importance of the principle of territoriality of licensing of rights for the financing of the European AV sector and at the same time need to improve the cross-border distribution of television and radio programmes online and to facilitate the granting of licences for cross-border access to content

##### **On AVMSD:**

- The reform of the audiovisual framework fits perfectly in the Digital Single Market philosophy. On the one hand, it confirms, reinforces and improves what works well, i.e. the country of origin principle and, on the other hand, the reform brings the Directive in line with the new realities.

## II. Speaking points

### General:

- The DSM is not only about the telecom and digital infrastructures; it is also about making available high quality creative content to a maximum number of Europeans, through all possible means and platforms.
- With our new proposals we will facilitate legal access to content across borders. We will work on a better enforcement of rights and on measures to combat piracy. We also aim for a fairer remuneration of rights with the participation of all players in the value chain. We will also review our audiovisual rules, laid down in the Audiovisual Media Services Directive, which already support the promotion of European works. We need to find the most appropriate way to promote European works, particularly online. We are in particular looking into efficient ways to promote European audiovisual works in video-on-demand services.

### Copyright

- The new copyright legislative proposals, in particular the extension of the principles of the Satellite and Cable Directive to some online services, will facilitate the clearing of rights so more TV and radio programmes are available online and cross borders. To do so the Commission is considering extending the country of origin principle to certain online transmissions of broadcasters as well as extending the mandatory collective management to certain types of digital retransmissions (notably IPTV).
- Extending the country of origin principle of the SatCab directive to certain broadcasting activities online (e.g. catch up TV and simultaneous screening) does not jeopardise the territoriality principle of copyright, of which the financing of movies and TV series often depends.
- We are aware of the importance of cultural diversity, diverse distribution channels and the need to embrace the diverse audiences in a linguistically and culturally relevant manner. [There is no intention to affect the contractual freedom of broadcasters and right holders.]
- The Commission's proposal will be supported by an Impact Assessment which carefully examines the impacts of different policy options, including on right holders and AV producers. In addition, the Commission relies on the results of the public consultation carried out last autumn, together with a study on the application of the SatCab Directive (which will be published at the time of the legislative proposal).
- I am convinced that the measures that we will propose will contribute to a more efficient and competitive European copyright-related market and will help our industry to better profit the DSM.

### On the AVMSD review

- The Commission presented its legislative proposal for updating EU audiovisual rules (AVMSD) on May 25 2016.
- The proposal addresses some of the concerns of EPC: i) the CoC principle is retained and simplified; ii) the provisions on the promotion of European works in on-demand services are reinforced (20% share of catalogues should be devoted to European works and these works need to be given adequate prominence) and MS will be able to impose financial contributions on on-demand services established in other MS but targeting their audiences; iii) on findability the proposal maintains the status quo clarifying that Member States are allowed to ensure discoverability and accessibility of content of general interest

### **On Media and Creative Europe:**

- A strong, innovative and creative European film sector is important for the competitiveness of our economy but equally for the preservation and promotion of our shared European values and cultural diversity.
- To enable the European sector to seize these opportunities, the Commission supports actions aimed at fostering attractive legal offers of European films, increasing their discoverability and findability.
- The EU is investing more than €100 million in the European film and audiovisual industries per year through Creative Europe MEDIA, which runs from 2014-2020. Based on a thorough ex-ante assessment, the European Commission proposed in 2014 to launch along with the EIF a €121m guarantee facility for the cultural and creative sector, equipped with a capacity building scheme to help banks understanding the specificities of the sectors – and therefore helping them to overcome their prejudices. Creative Europe will generate some €600 million in loans and reach out to thousands of SMEs in Europe.
- Creation is essential but is more valuable and rewarded only if it reaches an audience. This is the cornerstone of our copyright legislations in Europe, whether they originate from the tradition of copyright or from the tradition of right of author (droit d’auteur).

### **Defensive points**

#### **1. Territoriality-SatCab**

*Would the Commission maintain the contractual freedom and the right to encrypt TV/radio programmes as provided in the SatCab Directive if the country of origin principle were to be extended to online transmissions?*

- The existing rules under the Satellite and Cable Directive are indeed our starting point.
- It is important to note, however, that any intervention will need to respect the Treaty rules, including the competition provisions and the rules on the free movement of services. Also,

one should accept that any new provisions will be subject to interpretation by the EU Court of Justice.

***How will the 'SatCab' proposal be linked to other initiatives (e.g. portability, geoblocking)?***

- The other recent proposals have a different scope / purpose:
  - the geo-blocking proposal will not affect audiovisual services (excluded from the scope of the regulation);
  - the portability proposal is about cross-border portability of online content services by consumers who subscribed to such service in their Member State of residence and not about cross-border access to content. There are safeguards in the proposal – in particular the residence condition and verification mechanism – to prevent misuse of that regulation.

## **2. Value Gap**

***What will be the added value of your intervention given that many services already use technologies for identifying content?***

- Even if a number of major user-uploaded content services have in the last years put in place, on a voluntary basis, content identification technologies, they have done so on a voluntary basis and under their own conditions. These measures will now become obligatory for the services which would also need to be more transparent towards right holders on how these technologies function.

***Will the proposal affect the liability regime for intermediaries set in the e-commerce Directive (ECD)?***

- This proposal will be specific to copyright and does not affect the application of the rules relating to liability that are established in the ECD meaning that hosting service providers which meet the conditions set out in Article 14 ECD, will remain covered by the safe harbour provision. They would still need to put in place the appropriate measures in cooperation with right holders to ensure the functioning of their agreements with right holders and to prevent content not covered by the agreements.

***Isn't the obligation on service providers set out in the proposal a general monitoring obligation which is prohibited under Article 15 ECD?***

- Already today MS can under the ECD require service providers who host information provided by recipients of their services to apply duties of care which can be "reasonably expected from them". The obligation provided for in the proposal is one which can reasonably be expected from the covered services given the specific nature of these services and their importance on the content market.
- Additionally, the measures are to be applied in cooperation with right holders, which means that the services would need to have in place the effective measures, for example

content recognition technologies, but they would be applied to the content that is identified by the right holders in advance. The services would therefore not be faced with an abstract obligation to monitor all the content on their servers to detect potentially unauthorised content.

***Isn't there a risk that the proposal would stifle innovation and have a negative impact on start-ups***

- The proposal targets services that host and give access to the public to large amounts of copyright-protected content which means it would above all impact well established services which have reached a certain scale in terms of both content and audience. It does not create any barriers for innovative services and start-ups as such, (which may already today face difficulties to enter the complex market of online content services). It rather aims at creating more level playing field for services operating on the online content market.

### **3. AVMSD**

***Why have the provisions on promotion of European works not been fully aligned for TV and on-demand services?***

- We have strengthened the rules for on-demand service providers. This will lead to consumers of on-demand services being more exposed to European works than they are today.
- Applying exactly the same rules as for TV broadcasting does not make sense because the nature of both services is different. For example, imposing only a quota on VOD catalogues does not ensure that viewers will watch more European content. The reason is that viewers chose the film they want to see. This is why the 20% share is combined with an obligation to promote (make more visible) such works.
- Also, the fact that the share is 20 % and not 50 % (like for linear) takes into account the fact that this market, while quickly growing, is not at the same stage of development as the TV market.

***Why are rules on promotion of European works not extended also to video-sharing platforms?***

- The very nature of video-sharing platforms makes the extension of promotion of European works obligations technically challenging.
- A video sharing platform is a commercial service, that does not have editorial responsibility over the large amount of audiovisual content (programmes or UGC) that it stores. However, it organises it, including by automatic means or algorithms, in particular by hosting, displaying, tagging and sequencing the videos. Its principal purpose must be the provision of programmes or user-generated videos to the public.
- It would therefore be difficult to establish quota or prominence obligations to platforms sharing user generated content on which providers have no editorial responsibility. In addition, determining the European origin of these works would be extremely complicated.
- Finally, applying these rules to video-sharing platforms may risk undermining freedom of speech.

***Why is a 20% quota of European works in on-demand catalogues considered appropriate to ensure promotion?***

- According to the study on-demand Audiovisual Markets in the European Union (2014 and 2015 developments), the average share of EU films in 75 big EU VoD catalogues was 27 % in 2015 and 30% in 16 big SVoD catalogues. However, there are great disparities among catalogues of pan-European VOD providers (from almost 0% to to 70%) and among Member States (from an average of less than 10% to an average of almost 60%).
- By setting a 20% share of European works in on-demand services catalogues, the AVMSD will secure a minimum level of diversity across Europe and a safety net below which share of EU works in catalogues should not fall. At the same time it will ensure that providers established in Member States with smaller or developing audiovisual markets will still be able to grow.
- In any case, it is important to note that Member States will preserve the opportunity to set higher standards if they wish.

***Can we not expect providers to fill their catalogues with cheap/low quality content just to fulfil the 20% quota obligation?***

- Since the share obligation is combined with an obligation to give prominence to European works, we expect it would be in the interest of providers to have and promote works that are attractive to their audience which would reduce any potential risk of trying to circumvent the new requirements.

Authors: Article 4(1)(b), DG CONNECT.I.2, tel: Article 4(1)(b)

Article 4(1)(b), DG CONNECT I.3, tel. Article 4(1)(b)

Article 4(1)(b), DG CONNECT I.1, tel. Article 4(1)(b)

### **III. Background**

#### **1. On Territoriality/SatCab**

- Even though widely referred as the "review" of the SatCab Directive, the ongoing reflection concerns possible application of the mechanisms contained in the Directive to certain types of online transmissions by broadcasters and certain digital retransmissions but not the review of the existing Directive.

##### *Impact Assessment*

On 22 July the RSB gave a positive opinion on the draft impact assessment, covering among others the following measures:

- Application of the country of origin principle to the clearing of rights for broadcasters' online services ancillary to their initial broadcast (e.g. simulcasting, catch-up services).
- Application of mandatory collective management of rights to retransmission of TV / radio broadcasts by means of IPTV and other retransmission services provided over "closed" electronic communications networks (the preferred option excludes OTT). As in the case of cable retransmission, broadcasters would be able to directly license to the retransmission operators the rights in respect of their own broadcasts (both broadcasters' own rights and the rights which have been transferred to them by right holders).

##### *Public consultation*

- Prior to preparing the impact assessment, in August 2015 the Commission launched a public consultation on a possible extension of the SatCab rules to cross-border online (re)transmissions of TV and radio programmes. The public consultation gathered a total of 255 replies.
- Concerning an extension of the country of origin principle to online transmissions: while consumers, public service broadcasters, commercial radios and ISPs favour such an extension, the rest of stakeholders (right holders, CMOs, most commercial broadcasters, the majority of service providers other than broadcasters) are against it or call for a cautious and well-measured approach. Commercial TV broadcasters and right holders are generally against the extension of the country of origin principle due to the fear that, considered together with the application of the free movement of services principle and competition law, it may lead to the weakening of territorial licensing or even to mandatory pan-European licences.
- Concerning an extension of the mandatory collective management regime to simultaneous retransmissions on platforms other than cable: many stakeholders are in favour of such extension. Nevertheless, most right holders as well as commercial broadcasters are against such extension arguing that this may lead to potential disruptive effects on the markets.

#### **2. On accompanying measures**

**Accompanying measures to foster cross-border access to content: progress and options**

The Copyright Communication of December 2015 presented a series of new support measures, mostly funded by the MEDIA programme, accompanying the regulatory proposals. This note describes these measures, progress made so far and next steps.

### **Progress so far**

We are implementing the measures and expect the first results by the end of the year. The measures are grouped below according to their objectives, with a technical annex providing more details.

#### **I) Making films available in unsold territories**

*i) Ready to offer catalogues of European films.* Films from many small producers are being aggregated into catalogues for VOD platforms online. Good progress is being made in delivering innovative and diverse catalogues. In 2015 with a budget of € 0.65 million 34 films were included in catalogues whilst in 2016 with a budget of 1.3 million, about 70 additional films will be included in VOD catalogues (as part of the MEDIA Online distribution scheme). However the main challenge is for Member States and industry to scale up their collaboration and support more catalogues.

*ii) Develop licencing hubs.* The purpose is to develop online tools allowing legal access to content by viewers across borders. However, progress of this pilot project has been slower than expected due to difficulties in raising agile seed funding. We are monitoring closely the progress and considering the use of the H2020 fast track instrument to increase funding for prototype development.

#### **II) Promote a common system of identification of films**

*iii) Develop standard identifiers of works.* The envisaged action is to promote either the use of a common identifier or interoperability between existing ones at European level. Good progress is being made as on 7 June industry stakeholders agreed an action plan which aims to find a solution by the end of 2016. The two standard identifiers have agreed to work together. The solution would be based on self-regulation and result in an industry code of conduct. Incentives could be increased by making MEDIA funding and national funding of content subject to use of the standard identifiers.

#### **III) Make European films more findable and prominent**

*iv) Support the development of a European search tool.* The search tool would enable viewers to find legal offers for films online at European level. Good progress is being made. CNECT is collaborating on the prototyping which is led by the Office for Harmonization in the Internal Market (OHIM), with a view to deployment by Q2 2017. Discussions with Member States continue on how to federate existing national tools.

*v) Promotion of legal offers, discoverability and findability.* Investment needs to shift from over-production of new works to promotion and marketing of online works and services, in order to build audiences. Progress is uneven. On the one hand, a new Online distribution scheme will be set up under MEDIA as part of the 2017 Work Programme with an increased budget of € 9.5 million from €5.7 million. However, discussions with EFADs (the national films funds) have been inconclusive and overall industry has been unable so far to develop collaborative models and pool resources for promotion activities.

#### **IV) Smart subtitling and dubbing**

vi) *More efficient funding and use of subtitling and dubbing.* New tools and processes are being developed, through two preparatory actions, for funding and sharing subtitling and dubbing. Projects are exploring the use of digital platforms and crowdfunding for production of subtitles, an online repository and supporting cross-border distribution through subtitling. Good progress is being made as a number of innovative projects have been selected from which we expect new insights. This is an area where EU intervention can clearly add value and trigger changes in industry and national funding. The European Parliament clearly supports action in this policy area.

#### V) Promote new models for exploiting and financing films

(vii) *Find ways for a more sustained exploitation of existing European films.* Classic European films are often not available and new business models need to be found to create a sustainable market for them. This action is at an early stage. In 2016 policy evidence is being gathered through an in depth study by the European Audiovisual Observatory, due in July 2016. The conclusions could feed into the copyright legislative proposals and into collaboration with industry on concrete measures.

viii) *Develop alternative models of financing, production and distribution.* Good progress is being made with the launch of the Cultural and Creative Sectors Guarantee Facility. Discussions have started with the EIF on possible frontloading and topping up with EFSI funds. The Guarantee Facility could then be used as the main platform for gathering other sources of financing. In particular the animation sector could be a good test bed for new investment vehicles because it is more entrepreneurial and open towards structured industry cooperation.

### Conclusions

Overall, six months after the launching of the accompanying measures, the implementation process is on track. First concrete and/or interim results will be delivered by the end of the year, notably on the common standard identifier(s), the EU aggregator, ready-to-offer catalogues of European films and subtitling. The Guarantee Facility is ready to be launched and could be front loaded and topped up with EFSI funds.

The accompanying measures also aim to trigger changes in business practices by funding development of new technical tools as well as business models. Given the budgetary constraints our focus has been on supporting pioneering, innovative projects (e.g. Licencing hubs, aggregators). These need to be implemented efficiently and the results need to be showcased widely. In parallel, the collaboration with Member States and the industry is essential for these innovations to be scaled up and deployed at European level.

The overall success of the package depends on the engagement of the Member States and industry. Their active participation and financial contribution will be important in moving from pilot projects and other actions to deploying innovations at scale.

The co-operation with the EFADs has proved to be particularly valuable and helped to bring industry on board. It is worth noting that the UK, FR and DE film funds are taking the lead and strengthening coordination amongst themselves.

We now need to maintain momentum. As such, the Copyright package in September is a valuable opportunity to increase the visibility of these measures and build support for them. On this occasion, a joint statement from the Commission, EFADs and industry about the progress made thus far and prospects for future collaboration could give a strong positive signal. We could also announce at that moment a reinforced collaboration with the EIF and the EIB to financially support the cultural and creative sectors, building on the Guarantee Facility.

### **3. Background on European Film Forum**

The European Film Forum (EFF) was proposed by the Commission in its [2014 Communication](#) on European Film in the digital era. The EFF was formally launched in February 2015 in Berlin. Its aim is to develop a strategic policy agenda for the film sector with respect to challenges and opportunities brought about by the digital revolution. The Commission's Digital Single Market (DSM) Strategy aims to improve access to digital and audiovisual content. It is essential to discuss how to enhance the competitiveness, visibility and innovation in European audio-visual works and how to ensure a sustainable financing of EU works.

There are various EU initiatives and rules for the film industry covered by [copyright legislation](#), the [Audiovisual Media Services Directive](#), competition law and the [Creative Europe programme](#). However public financing and a number of regulatory aspects are essentially governed by Member States. They provide 30 times more public funding than the EU for the audiovisual sector.

The European Film Forum's dialogue with stakeholders and Member States provides opportunities to enhance synergies between public actions and enables the exchange of expertise and best practice. This dialogue is taken forward by the European Commission in different venues, notably during Film Festivals and TV markets where different formats are employed such as conferences, roundtable discussions and workshops. The process involves a wide variety of players including Member State authorities, the European Parliament, the European Audiovisual Observatory, the EFADs as well as national and European wide organisations supporting the film, TV and games industries.

Our aim is that through the conclusions of the above-mentioned events, the Forum will facilitate concrete adaptations in European funding systems and provide clear recommendations for the Member-States and the audiovisual industries, thus adding value of the upcoming review of the [MEDIA sub-programme](#) of Creative Europe.

10 European Film Forum editions are scheduled for 2016, peaking in December with the celebration of the 25 years of the MEDIA programme in Brussels.

## **What are the issues tackled by the European Film Forum?**

- **Modern film financing:** Current business models see distribution and financing as interrelated through presales and co-production and the exclusivity of rights. The EFF is a place to discuss the use of other forms of financing like private investment by third parties or crowd-funding, which develops with digital technology.
- **Smart public support:** Film, especially production, is publicly supported at national and local level through various means like loans, subsidies and tax rebates. The EU focuses more on development, distribution, promotion and training activities; new forms of support aiming to boost entrepreneurship such as guarantee facilities are also emerging. In this context, exploring the complementarity between film support policies at national, local and EU level with the aim to increase overall efficiencies appears crucial.

The EFF works on increasing the complementary and optimization of different sources of public funding (local, national and European). A structured dialogue with the EFADs is one of the steps planned to accomplish this purpose.

The Cannes 2016 edition of the European Film Forum explored new modes of financing for audiovisual works, in the presence European filmmakers.

## **4. Background on the European Producers Club (EPC)**

**The European Producers Club (EPC)** is an association of 100 influential independent film producers, coming from 20 countries around Europe.

Founded in 1993 within the framework of the GATS negotiations, EPC acts as a network, a think tank and as a lobby. The EPC mission is to keep their members up to date with the latest developments in the film industry in Europe and across the world; they encourage collaboration, joint financing and coproduction across countries; they also lobby on a political level to protect and further the interests of the European industry and European producers.

To this end, EPC has become expert in the organization of events that bring together film professionals from around the world, whether for conferences, networking events within or outside Europe, and workshops.

In addition to the individual companies which are members of the EPC, the EPC coordinates an alliance of national Producer Associations across Europe through the EPAA (European Producer Associations Alliance) and thus boasts a network of over 3000 industry professionals. The European Producers Associations Alliance (EPAA) was launched at the Cannes Film Festival in 2005. It unites the most prominent national producers associations across Europe and is coordinated by the European Producers Club.

The EPC opened a representation office in China in 2013.

### **EPC EXECUTIVE COMMITTEE:**

**President: Marco Chimenz CATTLEYA Italy**

Vice-Presidents: Dariusz Jablonski APPLE FILMS Poland  
Johannes Rexin HEIMATFILM Germany  
Nina Laurio SOLAR FILMS France  
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#### IV. CV of participants

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