

Resolution 2007

EU XXL film, forum and festival of European film had invited different representatives and stakeholders of the European audiovisual sector – producers, directors, cinematographers, scriptwriters, composers, actors, film funding institutions and author's societies – to discuss European policies concerning the audiovisual sector as well as the challenges and chances that the European audiovisual sector (e.g. film and television) is facing within a single market, and to consider the competitive situation as well as the demand for maintaining the European cultural heritage and its diversity.

This common Resolution, elaborated in the course of different lectures, panels and working groups and subsequent plenary discussion rounds during the EU XXL forum, held from 26th of February –1st of March 2007 at the Danube University Krems in Austria, and under the chair of independent media experts, is serving as a contribution to the ongoing opinion forming and decision-making process.

General Remarks:

As regards international film festivals, European documentaries, feature films and short fiction films are very successful. On the other hand since the 1970s the market share of European film has receded dramatically. European film productions play a rather marginal role in the European as well as in the international market. The market predominance of US-American mayor films narrows the spectrum of available content. Given this, it is desirable from a cultural, social as well as from an economical point of view to increase the market share of European film.

More generally, to date, the specific role of the audiovisual media for democracies, the decision-making processes, for diversity and pluralism and for a healthy development of the related cultural and economic sectors has been reflected also in the European audiovisual regulatory framework and related support mechanisms. Due to the technical and international developments there is a constant need to review the existing legal framework, a challenge for the entire audiovisual sector. We welcome therefore the different efforts made by the European institutions to meet these challenges. Therefore, a need was established for better and more appropriate consultation opportunities.

In reference to the E-Commerce Directive, the Copyright *acquis communautaire*, the Framework for Electronic Communications – and, particularly, their respective review, the entire set of regulations on services that provide audio and audiovisual content in general have to be reconsidered simultaneously to guarantee a consistent and coherent framework for all media services.

Specific attention was paid to the following:

1. Television without frontiers

2. Licensing without frontiers

1. Audiovisual Content without Frontiers

1.1. Digitalisation and new technical possibilities for the distribution of audiovisual content render inevitable the extension of the scope of the Directive 89/552/EEC “Television without Frontiers”, as amended by Directive 97/36/EC, for all media services providing audiovisual content. The scope of application, however, should not be construed in a too restricted way in order to avoid the future Directive being unable to cover relevant new phenomena of audiovisual mass media services. The Directive’s scope should cover packagers and bundlers, since these actors in the audiovisual field are gaining particular influence on the construction of media markets so that their activity must be considered similarly important as compared to broadcasters or providers of on-demand services.

1.2. The country-of-origin principle remains to constitute the core principle of the Directive. As far as exemptions to the principle of free retransmission are concerned, participants agreed to welcome the so-called “emergency-clause” in new Art. 2a para. 2a which shall ensure that most important public policy objectives may be secured by way of immediate reaction to upcoming problems.

1.3. Besides the existing obligations under Articles 4 and 5 of the TwF Directive (see below), the participants discussed whether there is a need to develop specific measures to enhance high quality and cultural content also in the on-demand environment. Consensus was reached that in principle such an extension is desirable and that for providers of non-linear audiovisual media service there should be requirements to further European productions; such requirements to be construed in a progressive or dynamic manner so as to cope with the relevant developments of this sector.

1.4. It should be avoided that interpretations by the Member States of the concepts of ‘European work’ and ‘independent producer’ differ. Therefore, particularly the notion of independent producer should be more precise and more protective. This would allow a uniform European assessment and shall contribute to an appropriate control of the quotas’ implementation. The criteria envisaged by the Commission should be moved from the Preamble (rec. No. 31) to the substantive text of the Directive. The percentage of 10% of transmission time or investments provided in Art. 5 should be increased, taking into account the peculiarities of small Member States’ markets. Public service broadcasters, in view of the mandate assigned to them, should devote particular attention to the commissioning of independent works. In addition, in the calculation of the transmission time – and possible also with regard to investments – for European works, where appropriate, special requirements for recent works are highly advisable. The participants welcome the attention given in the Preamble of the new proposal to the non-domestic European works.

1.5. The decision of the Commission to deeply liberalise advertising insertions and duration should be reconciled with the protection of viewers, authors’ rights, fair distribution of advertising revenues between different mass media, special protection for particular programmes, e.g. documentaries, films, consumer programmes, current affairs programmes. In case of children’s programmes, a total ban of advertising insertions is advocated for, as well as more attention to marketing practices adjacent to such programmes.

1.6. When deciding to permit product placement which remains to be an exception to the basic principles of advertising regulation, Member States should pay particular attention to the vulnerability of certain programme genres and audiences.

1.7. The participants stressed the importance of independent media authorities, the introduction of which was endorsed by the European Parliament following the Commission proposal. In view of the tasks attributed to such authorities, their particular contribution to a proper implementation of the Directive and to the safeguard of media diversity were highlighted.

1.8. Media diversity was seen as a very important factor for the European audiovisual and media sector as a whole that requires action not only at a national level, but also – with regard to the increasing formation of public opinion and a most desirable strengthening of the democratic process – at the European level. When measures are to be taken, preference should be given to structural precautions over conditions that relate to behavioural aspects, in particular as far as codes of journalistic and/or editorial conduct are at stake. However, such measures should be envisaged where they have not been taken to date. Furthermore, it should be made clear that in particular the obligations on Member States deriving from Art. 10 ECHR render it indispensable that clear provision is made to avoid control over media outlets by national authorities, e.g. members of the executive or members of parliament where, in the latter case, influence on the decision-making process by such means cannot be excluded. When it comes to the importance of public service broadcasters in respect of a diverse media landscape, emphasis should be laid – in any further action by the Community – to the stipulations of the “Amsterdam Protocol on the system of public service broadcasting in the Member States”. Thereby it shall be ensured that Member States put vigilance on securing adequate funding of such institutions, preferably by licence fees or similar contributions, and that, when access to advertising markets is allowed, such possibility should be foreseen by simultaneously paying attention to the overall market situation. These approaches, taken together, should by all means aim at preserving the important role of PSB in respect of media diversity and as far as the promotion of European works and independent productions is concerned. With a view to the former, this would form a decisive step for implementing the requirements of the UNESCO Convention on the diversity of cultural expressions.

2. Licensing without Frontiers

The point of a single market is to promote competitiveness. The European Union indeed has become ever more competitive. The European content industry is no exception to this. The lowest prices and the greatest efficiencies are pursued in almost all areas.

The established trend towards broadcasting without frontiers, the explosion in the use of both the internet and mobile telephony and the convergence of all of these act as a challenge to all stakeholders and policy-makers to ensure that changes take place where needed and that in a manner as effectively and fairly as possible.

The “impact assessment” preceding (and accompanying) the Recommendation of the European Commission on the collective cross-border management of copyrights and related rights for legitimate online music services does not reflect the market reality because it focuses only on online business leaving aside the important mobile market which is far more developed in the European Union as in the USA.

Introducing free competition via dismantling the network of national collecting societies and their reciprocal collection agreements is not the optimum way to introduce market change. Most likely it would result in the largest societies making pan-European contracts with the major publishers whose repertoires generate the highest revenues.

The consequent loss of revenue for small and medium collecting societies would endanger most of them to continue their activities. Without certain economies of scale, higher cost ratios would inevitably result in reduced royalties for non mainstream repertoire and local artists. In the long run, more independent, culturally more diverse repertoire will cease to be required for licensing.

Furthermore, the cultural promotion and social support programmes run by many societies in support of minority repertoire and local artists would suffer or disappear altogether.

As author's rights serve as a key to cultural and economical growth and diversity, the regulatory frame has to be adjusted for the digital environment in a careful and balanced way. As author's – and related rights are based on at least four pillars– material copyright, enforcement of rights, managements of rights, copyright contract law – the EU and the 27 Member States shall treat all of them equally within a regulatory frame. A legislative procedure would guarantee a broad participation of all relevant stakeholders – primary and secondary rights holders, users and the public – greater transparency and better public awareness for the different needs and the chances involved.

The participants welcomed the initiative report of the legal affairs committee of the European Parliament on “collective cross-border management of author's rights and related rights for legitimate online music services” at 27th February 2007 to be voted upon in March by the European Parliament.

Participants stemming from a variety of different cultural profession

- Stress solidarity among all categories of right holders.

- Favour the establishment of a pan-European system of licences for online uses, consisting of reciprocal agreements and based upon the country of destination principle.

- Call on the Commission not to bypass democratic procedures by issuing recommendations.

- Remind Telecom companies and carriers of their co-responsibility for the promotion of legitimate online services based on copyright protected content.

In addition the Participants welcomed the decision to withdraw the Commission's Recommendation on “fair compensation in respect of reproductions made by natural persons for private use”, and that clearly a need was perceived by all European institutions, Member States and relevant stakeholders for a more thorough assessment of all factors involved.

Today private copying remuneration schemes represent a vital income for creators. This income also contributes to a large extent to the development and the promotion of new talents and productions. TPM are not an effective substitute to private copy remuneration systems.

Therefore the participants

- Support the existence of a private copying remuneration scheme in every European country, and its implementation where it does not exist yet.

- Stress the need to have fair and balanced representation of the different rights holders within the decision making boards of collecting societies.
- Request an equitable share of private copying revenues among right holders.
- Believe that these revenues should not be waivable.
- Believe that the remuneration of rights holders with respect to their copyright protected content circulating on digitised communications networks is to the benefit of the development of broadband in Europe, as it enables the creation of consumer-attractive services.
- Support the exchange of information and the solidarity among formal and informal networks working in favour of author's and performer's rights and the need for collective reciprocal agreements' structures – such as CISAC, ECA, Coalition for Cultural Diversity, INCD/INCP, etc – to the benefit of cultural diversity.

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