

UNIC CONTRIBUTION TO EC CONSULTATION On Directive 93/83/EEC of 27 September 1993 on the on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission

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The International Union of Cinemas/ Union Internationale des Cinémas ('UNIC') is the European trade association representing cinema operators and their national federations across 36 territories in the EU, the EEA, Russia, Turkey and Israel.

We welcome the opportunity to comment on the European Commission's consultation on the Review of the EU Satellite and Cable Directive. While the consultation primarily concerns other audiovisual stakeholders, certain principles examined are important to cinema operators. In general, UNIC supports its partners across the film value chain regarding their requests to maintain exclusive rights and commercial freedoms to enable the film sector to decide how, when and where films will be released in Europe.

We would first like to point out that cinema continues to constitute the most important market for films. Global box office revenues reached € 33,5 billion in 2014 and are set to break all-time records in many European countries in 2015. The theatrical release of a film before its release in other version markets (physical video, Video on Demand, television, etc.) creates an unparalleled level of consumer awareness around a film, which ultimately benefits the title's performance on subsequent platforms. UNIC feels it is important to highlight this strong theatrical value at a time when the European Commission's focus clearly rests on promoting online services.

Our key concern regarding the revision of the Directive is to safeguard the right of cinema operators and film distributors to negotiate exclusive theatrical releases on a territorial basis. Given European cultural and linguistic diversity and the resulting fragmentation of Europe's audiovisual landscape such territorial agreements are common business practice in our sector. We are therefore concerned regarding any questions in the consultation that point towards the potential establishment of mandatory or incentivised pan-European licensing models for the online distribution of films. Such an approach would clearly limit the exclusiveness of the theatrical release in most territories and lead to a loss of competitiveness and value in cinema exhibition.

Release dates for films differ across EU Member States due to different release densities (some countries release more local films than others), different holidays, weather conditions, varying market conditions and a variety of further factors (broadband proliferation, etc.). A good example is the EU box office hit *Intouchables*, which was strategically released at different times across EU territories to benefit from the word-of-mouth that had already emerged in other countries¹. The film ultimately attracted 18.5 million visitors to cinemas outside of France.

¹ The film was released in Estonian theatres seven months after its initial French release. It was brought to the big screen in the UK nine months after the French release.

This success was achieved on the basis of the above-mentioned theatrical distribution strategy – based on copyright exclusivity and commercial freedom – which allowed rights holders and cinema operators to decide when and where the film should be made available.

Any mandatory or incentivised pan-European availability of the film on an online service during the time of the exclusive theatrical window in any given territory would have seriously damaged its theatrical prospects of.

The European cinema landscape is highly interdependent. Diverse stakeholders operating in this eco-system share the risks of financing, creating and distributing creative works that are incredibly expensive to make and promote. Rights are furthermore licensed on an individual basis and collective licensing remains rare. Copyright exclusivity, commercial freedoms as well as the protection of copyright and neighbouring rights are the backbone of this system. UNIC members are seriously concerned that any attempts to water down or reduce these standards could ultimately lead to a less diverse and less competitive European film and cinema sector.

We would like to underline that there is currently no obstacle in European copyright law to the negotiation and / or granting of multi-territorial licences for the online distribution of films. If sufficient cross-border demand exists – and if film producers or distributors wish to not work with a local partner to promote the film in a foreign country – they can already today release it on a pan-European VOD platform.

Evidence from the broadcasting sector shows that rights holders continue to exercise their contractual freedom to exploit content in the most efficient manner through exclusive territorial licences. This is made possible by key elements of the Directive, which mitigate the limitations to exclusive rights. Recital 16 for example states that contractual freedom forms the basis for acquisition and exploitation of exclusive satellite broadcasting rights. This is also reflected in article 3 of the Directive. Article 10 provides flexibility in licensing options as broadcasters are exempted from the obligation of the collective management of rights and also provides producers with the ability to license their cable retransmission right directly to the initial broadcasters. Those safeguards guarantee crucial protection for the audiovisual industry.

In view of the above, it is UNIC's view that it would be unwise to extend the country of origin principle to online audiovisual services, as suggested in the consultation. Several EC-commissioned studies highlight that such extension could have negative impacts on copyright enforcement, investment levels in film production and limit consumers' access to and circulation of European works. Ultimately, cinema operators would suffer the consequences, while a few large international VOD platforms would crowd out more diverse European VOD offers. Regarding the current scope of the country of origin principle to the broadcasting of programmes by satellite, UNIC believes that it is crucial to maintain existing safeguards that protect the principle of contractual freedom (Recital 16).

UNIC members furthermore believe that the EC should not introduce mandatory collective rights management for Internet retransmission or other forms of online distribution. Any such introduction would have to retain important safeguards, including flexibility in licensing options (Art. 10).