



EUROPA DISTRIBUTION POSITION PAPER March 2012

WHO ARE WE?

Europa Distribution is a professional European network of independent distributors headed by award winning film director Cristian Mungiu.

- 110 independent film distributors members of the network
- 26 countries
- 780 films released in 2010, among them 540 European films
- 69% of the films released by the members are European films
- 56% of the films released by the members are non-national European films
- 70% of these releases are supported by MEDIA (via the automatic or the selective schemes)
- Among the European films included in the Official Selection of the Cannes Film Festival during the past three years, roughly 85% were distributed by independents.
- Among the films awarded prizes at Cannes, Venice and Berlin during the past 6 years, 80% were distributed by independents. Among them : Ken Loach, Michael Haneke, Wim Wenders, Lars Von Trier, Nanni Moretti, Pedro Almodovar, Roman Polanski, Jacques Audiard, Theo Angelopoulos, Aki Kaurismäki, Krzysztof Kieslowski, François Ozon, Stephen Frears, Manoel De Oliveira, Emir Kusturica.....

To begin with, we would like to recall the **distributor's role in the cinematic chain**. The distributor is **an intermediary between the producer and the exhibitor** and it performs three functions:

- financing the production of films through a guaranteed minimum (the amount of the MG is based on the recoupment anticipated by the distributor on all the rights) and advances,
- financing their release (promotion & advertising, manufacturing of prints) and
- maintaining relationships with cinemas. In this sense, it is us who has the marketing expertise and knowledge of the territory in cinematographic chain. Depending on the contracts we have with producers, we may have the following rights: theatrical distribution, DVD, VOD, TV (free or pay TV), Internet, airlines, ships..... Distribution is thus by nature a national activity.

How does the business work? The distributor advances the prints and promotion/advertising costs at its own risk and recoups them from his share of the receipts coming from cinemas, after deduction of the commission, which pays its services. So if the film does not do well at box office, then the distributor does not recoup the advanced expenses and the minimum guarantee. **The unpredictability of this business explains that only one film out of ten does actually recoup the advanced expenses.** This risk is even higher for 'difficult films' or low-budget films.

European distributors are facing a challenging time nowadays: credit crunch, competition distortions by bigger groups and American major studios, increased integration, inflation of costs, lower revenues from traditional second markets (TV, DVD...) and especially the arrival of new technologies and the digital switch. **Digital means of course new opportunities for European distributors:** new revenues (VOD, catch up TV...), new aggregators looking for European content, flexibility, better circulation of European works, pan-European opportunities and economies of scale. **But during the**



transition period, European distributors will face higher costs to release their movies as well as fewer revenues and this has to be taken into consideration.

This position paper focuses on particular European policy issues that have direct effects on European film distributors.

CREATIVE EUROPE

Europa Distribution would like to underline the impressive achievements of the MEDIA Programme over the last 20 years, which has enabled to build a strong and competitive European film industry with large cultural influence. These achievements show how important, efficient and direct purpose linked the MEDIA spending has been in audiovisual sector.

Since its beginning, the MEDIA Programme has promoted favourable financial environment for European distributors to maintain their structures, hire staff, and acquire and release films that combine market ambition with cultural diversity.

As said in the introduction of this document, **56% of the releases** of the distributors members of Europa Distribution **are non-national European movies. 70% of those** non-national European movies **benefit from the support of the MEDIA Programme.** As a result, non-national European works have been released in more countries with better promotional campaigns and have generated more admissions. **All funds received have been reinvested** in coproducing and buying of other European movies or invested in bigger marketing campaign in order to grant them a better level of advertising in a market strongly dominated by US products. Moreover, the MEDIA Programme has always encouraged the **emergence of European networks like Europa Distribution** which are today a reality of the market and embody the very idea of Europe. In this period full of challenges with the digital switchover, the exchange of competences and experiences information at European level becomes more important than ever.

In a highly competitive audiovisual market, American companies can take high benefit from the disappearance of European independent production, distribution and exhibition companies. We know that “perfect competitiveness” only exists in books but we believe this is something we all should aim at. **American Major Companies can easily distort the competitive market with their huge power.** For this reason, we strongly believe that the presence of the Media Programme is one of the essential tools that European independent companies can use to compensate the inequalities present in the market (together with their creativity which is the basis of Europe’s cultural diversity, the quality of their job, the flexibility of their structure and many other elements).

This is why Europa Distribution fully supports the multi-annual budget increase for the cultural and creative sectors proposed by Commissioner Androulla Vassiliou on November 23 2011. The Creative Europe programme intends to support the cultural and creative sectors with a total budget of €1.8bn, an increase of 37% on 2007-2013 spending levels. This budget will be spread out for 55% for MEDIA.

Theatrical distribution schemes:

In the EC Communication, it is said that resources for distribution will be increased, but there are no precise figures at this point. As said before, in these times of transition, European supports dedicated to theatrical distribution in Europe should be increased in order to meet the new needs of the sector and



enable the emergence of stronger European distributors with increased revenues, bigger market share, and wider audiences to compete against American majors.

So this is why we would like to emphasize the following points:

- Need to increase the budget for MEDIA distribution schemes :
 - o In the current Creative Europe proposal, the budget for MEDIA distribution schemes is decreasing : in MEDIA 2007, it represents 32% of the global budget, and in the future programme, only 27% of the global MEDIA budget will be dedicated to the distribution schemes. The distribution support schemes have proved over the last few years their efficiency and have enabled European films to circulate more and European distribution companies to become more competitive. In a time of transition and digital challenges where distributors are facing inflated expenses, it is important to increase the share of the global budget dedicated to distribution schemes to develop the competitive advantage of European films towards American films.
 - o This budget increase is especially important for the MEDIA automatic support. The MEDIA automatic support is based on the box office receipts from non-national European films and can be reinvested in the co-production of another non-national European film or in its distribution. There has been a budget deficit in the automatic for many years which has been steadily getting worse. This will have a big impact in the near future on the distributors' capacity to finance European films and to release them with sufficient P&A in theaters which could lead, in the end, to less circulation of European movies as well as decreased market share.
 - o We believe it would be a fairer and more efficient distribution of resources, to effectively reach the MEDIA objectives in the field of European film distribution, to allocate not less than 40 M€ to the distribution purposes: 25M€ for the automatic scheme, 15M€ for the selective scheme.
- Increase the distinction between the selective and the automatic schemes in order to reinforce their complementarity
- Work towards fewer contracts and simpler procedures. This would also enable to shorten the period between application date, delivery date of the MEDIA agreement and date of concrete payment and avoid cash flow issues for distributors.

On-demand services

We also believe that it is essential to improve the offer of European content available for consumers on various distribution channels. This would have positive impacts on cultural diversity and European cultural identity.

This is why we suggest to take new measures to ensure the share and/or prominence of European works in the catalogues of programmes offered by on-demand audiovisual media service providers.

The MEDIA Programme already supports the creation of VOD platforms, which offer catalogues with a prominence of European works via their VOD/Digital Support scheme.

We would like to suggest dedicating a part of this scheme's budget to the **creation of a VOD automatic support based on the VOD downloads** similar to the automatic scheme that already exists for the theatrical distribution of European works. The amount of potential VOD support would be based on the



number of downloads made by non-national European films on VOD platforms and be reinvested in co-production of non-national European works or their online distribution.

We believe that such a scheme would support efficiently the competitiveness of the audiovisual content industry in Europe and encourage the presence of European works on European VOD platforms.

CINEMA COMMUNICATION – DISTRIBUTION AIDS

Europa Distribution strongly believes that the scope of the new Cinema Communication needs to be extended so to include aids for activities other than production, in particular distribution and diffusion aids. That would yield more **legal certainty for distributors and greater ease to existing burdensome notification processes**. National production supports have enabled Europe to produce a large number of varied European films, which reflect Europe's cultural diversity within and outside the European Union. It is now important to ensure that these works get distribution both in and outside their home country and reach audiences via both traditional (theatres) and new platforms. Clear inclusion of distribution & diffusion supports in the Cinema Communication would also be a good incentive for those Member States that do not have such aids to develop one.

EUROPEAN DISTRIBUTORS AND THE CINEMAS' SWITCH TO DIGITAL

Theatrical distributors are now facing the **most important technical change** since the origins of their industry.

During the transition period, distributors will indeed face higher costs to release their movies.

- On the one hand, **distributors contribute to the financing of the digitisation of the European screens** (via the Virtual Print Fee mechanism (VPF) or via a digital contribution: the anticipated savings of the distributors with digital prints are aimed at financing the digital equipment of exhibitors) for a certain period of time (between 6 and 10 years depending on the contracts). In addition, with digitalization, there will be no more second-hand prints: distributors from smaller territories or with late releases who used to rely on the use of second-hand prints to distribute a film will have to pay full VPF.
- On the other hand, **distributors have to provide screens that are already equipped in digital and screens that are not**, so they have to pay for 35mm as well as digital material.
- These elements **rule out the anticipated cost savings** that could derive from the lower cost of a digital copy during the transition period.

This is why **two elements are very important for distributors** regarding the digital switch:

- It is important to **have all screens equipped** to avoid the creation of a two-tier system. Some states have started implementing supports for exhibitors who cannot benefit from the VPF system.
- It is essential that **the financing of digital equipment by distributors is limited in time** (maximum 10 years). Once the European screens are equipped with digital projectors, there is no reason for distributors to keep on paying a VPF. For instance in France, there is a specific provision in national law on this point.

ONLINE DISTRIBUTION OF AUDIOVISUAL WORKS

The positive commitment to and understanding of market and technological evolution is essential to Europa Distribution.

European distributors are indeed ready to experiment new business models because new distribution channels challenge current practices. This is a developing market and switch to digital is in transformation. European distributors need to be able to make the most sensible decisions for their businesses during this period and try to get the most benefit from new digital platforms. Therefore there is



no logical reason for distributors to try to avoid any new business opportunities that are beneficial for them and for the future of the market.

But it is true that, from a strictly economic point of view, **new distribution platforms seem so far little favourable to European works.** VOD platforms are largely in the hands of non-European operators that have no natural inclination to defend European films, unless they are widely popular hits that no commercial operator would avoid. Not surprisingly, the market share of European works on these new distribution channels is also much lower than they are in theatres or on DVD. This also affects directly distributors who most of the time own VOD and Internet rights when they buy non-national movies.

So right now, the issue of transition between a new online market, which will be huge but is still very small, and the current statu quo is at stake.

This is why, in the meantime, territoriality still has an essential role to play, and will keep some role in any case.

Market practices have indeed established territorial licenses linked to the financing and distribution of audiovisual works, even if there is currently no legal obstacle for multiterritorial licenses in terms of copyright.

Distribution is by nature a national activity and is currently based on:

- **Exploitation by distribution territories**
- **Exploitation by “windows”** (cinemas, DVD, VOD, pay and free TV): in certain territories, there is a legal framework (France, Portugal), in other territories, the windows are based on inter-professional agreements or market practices.

This guarantees different media exclusivities per window and per territory in return for pre-financing of works.

Pan-European licenses would give a serious competitive advantage to few organisations operating on a Europe-wide basis, i.e. the American majors, as opposed to independent national distributors, and paradoxically reduce the number and variety of European films released outside of their home country, of which there are already very few. Territorial promotion is also a necessity because the distribution of European films is generally progressive, territory-by-territory, with different release dates. Distributors have the expertise and the know-how of their territories and cultures.

Rather than regulating the licensing business, which is best decided by the market, or putting legally compulsory quotas in online VOD platforms, we believe it would be a fairer and more efficient action to have the **new distribution channels investing money (minimum guarantee) in the production of European works:** this would be the best way for them to secure the access to European works. We, as being people working in this field every day, very well understand that new media changes traditional models, however, this put also places us on the best position to see that without support to production from distribution side, sustainability and diversity of the market is seriously endangered.

To be on the solution side, we, as Europa Distribution, **are currently brainstorming with other professionals on implementation of a new MEDIA preparatory action on transversal (simultaneous multi-territory and multi-platform) distribution** that the EC is planning to launch very soon. Our objective is to have distributors (in various European countries) test business models that normally use windows (day and date...) and cross-border strategies, to assess their results and see whether there is a competitive market for new/different possibilities.



ANIMATION FILMS

We believe that it is necessary to implement **specific action lines for European animated films**. The production of European animated films has increased a lot in the last 10 years, but the US majors and their huge marketing campaigns for their animation films at pan-European level are distorting the competitive market and leave little space to European animated titles. We believe that there is nowadays a lack of branding for European animation movies and that it is something European producers and distributors could work on. By better promoting / merchandising European films to young audiences and their parents, we are building the future audiences for European cinema.

This is why, together with Cartoon-European Association for Animation Film, Europa Distribution would like to propose a new action line / preparatory action to MEDIA for European animated films: the idea would be to set up a platform that would significantly support, with the help of the MEDIA Programme, the promotion, marketing and merchandising of 3-5 European animated films each year released by European independent companies. **The ultimate objective is to create a well identified brand, a label for European animated films** that could compete with the existing US brands (Pixar, Disney, etc ...).

More information on: www.europa-distribution.org

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