



European network of Independent distributors

## Case AT.40023 — Cross-border access to pay-TV

### Observations from Europa Distribution – The Network of independent Film Distributors

ID: 626116910064-95

22 May 2016

**Europa Distribution** is the network of independent film distributors, gathering more than 140 leading independent distributors representing 28 countries in Europe and beyond. Since its creation in 2006, Europa Distribution has accompanied and reinforced the integration and collaboration process between its members through information, brainstorming and training sessions. The network's aim is to strengthen the existing ties to improve the curation, promotion and distribution of independent films.

Curators, key players in the circulation of films and cultural diversity, the distributors members of Europa Distribution release most of the films awarded in Cannes, Berlin or Venice.

**In the film chain, distribution is the central link that connects the film to the audience; production to exhibition.** Distributors acquire exploitation rights of the films for a given territory, a given language and a given period of time. They cover the release costs (prints, subtitling/dubbing, marketing,...) and provide the editorial and promotional work to create demand around a film and make it exist in their territory and for their local audience. Most of the time, distributors acquire not only the rights for the exploitation in theatres: they also handle the video edition (DVD and Blu-Ray) and the sales to TV channels and VOD platforms.

The European independent film distribution sector is formed mainly of small and medium-sized enterprises, each with distribution and marketing expertise to work within a specific national context where the competitive landscape, cultural sensibilities and seasonal considerations such as holiday dates and customs, may vary considerably from one territory to the next.<sup>1</sup> **Independent distributors create demand and engage audiences** for the films in their line-up and hence are key players in their circulation, **financing them through pre-sales, and investing in their curation, promotion, and selling.** These investments in most cases are not subsidized; therefore independent distributors bear alone all the risks of releasing a film. They need to be able to count on the exploitation on all local supports (theatres, DVD, VoD, TV,..) and for the whole duration of the licensed rights to recoup on these investments.

---

1. The BENELUX countries are an interesting example on this matter: most distributors are operating on the three territories, yet the release date is often different, as the poster or even the marketing campaign. Reality shows that the release must be tailored territory by territory to be efficient and that a good release date is essential to exploit the film at best



## European network of Independent distributors

**Making borders permeable** by tearing down the online geo-blocking barriers or allowing the platforms to answer unsolicited request from consumers living in another country would affect the distributors' ability to release a film at the best moment to reach the local audience. It would be unworkable if a film were available on VoD in one European country, that all Europeans citizens outside this country could also have access to it while there is a release foreseen by a local distributor in their own country. This would **affect the media chronology** and it could lead to a **huge disruption of the market**.

It would increase the **risk of investment** of buying and promoting the film. And because the audio-visual sector works as an **eco-system**, it would not harm only distributors: by buying the rights for the films they release, they are one of the most important sources of financing for the films. If the risk is higher and the revenues are lower, investments in production will decrease. In the end it is **the circulation of films that will be at stake**, and the result will be just the opposite of what the Commission wants.

**Licensing on a territory-by-territory basis will always remain essential to raise financing for audio-visual productions and for the successful commercial exploitation of the works once created.** Drastically restricting this competitive activity would surely put the future financing of many independent European films at risk. It is important to note that **the online world is NOT like the physical one** and everything can easily go viral. It would be impossible to ensure in the case of passive sales that certain VoD platforms will not become popular across Europe thanks to the action of Internet users, **creating de facto pan-European licenses**.

By consequence, it would create a risky environment for European films and their operators, weaken the film production business model and have a **significantly negative impact on growth, jobs, circulation of films and cultural diversity** and with low prospect of adaptation for all the European actors of the audio-visual sector. There seems to be **no obvious beneficiary of any restriction on territoriality** apart from the powerful telecoms and Internet companies, and certainly not the consumer.

*In order to give an idea of how permeable borders would impact the media chronology and the release of films on every support (not only VoD) and in different countries, here is an example to illustrate the effect of mandatory cross-border access:*

- *In May 2016, a French distributor releases the English film XYZ. Following the French media chronology, four months later it will be available on French VoD platforms, with French subtitles.*
- *The Belgian distributor of the film chooses to release the film in September. A reason for this choice of a different theatrical release date could be a very high number of films being released in May in Belgium and the difficulty to find place in the right theatres to release the film, while in September the film would have more space and visibility.*



### European network of Independent distributors

- *If passive sales are allowed, from September 2016 Belgian citizens could then make an "unsolicited request" to any French VOD platform and watch the film XYZ.*

*In consequence:*

- *Belgian theatres will likely not want to release the film; it's already available on Vod in a country sharing the same language and exhibitors would be afraid to loose consumers to the benefit of the French platforms*
- *This will also impact the sales for DVD, VoD, Pay-Tv, and TV. In short all possible Belgian platforms where to exploit the film*
- *While the Belgian distributor paid for the rights, prints and promotion in Belgium, people might watch it on a platform in a different country, meaning less return on investment for the Belgian distributor*
- *This devaluation of rights could lead to distributors not wanting to pay as much for the rights of the films, or deciding not to buy them at all because the investment does not weigh up against the potential revenue. This results in less financing of films.*
- *Furthermore, distributors in certain territories would not want to invest in promotion because the risk of people watching it elsewhere would be too high. This results in less circulation.*

**In conclusion, and as the example above shows clearly, any measure eroding the territoriality of films rights by allowing or mandating the platforms to answer unsolicited request would have a high negative impact on the ability of right holders to finance, license and release a film at best. The whole audio-visual value chain would be highly affected, and by domino effect consumers will see the offer currently available reduced drastically as they would lose their current access to content. As all kind of films would be impacted, cultural diversity would be threatened.**

**The actors of the financing and licensing of European films are intermediaries between authors and consumers, who believe in a project, pre-finance it; promote it and make it available. These intermediaries are mainly small and medium-sized enterprises with an essential local know-how and expertise and don't have the capacity to work on a pan-European basis. They can only recoup their investment once the film finds its audience in the territory they have bought the rights for. If borders become more permeable, they won't be able to get their financing back and keep investing in creative works.**

**It seems evident that preventing or weakening territoriality will lead to the devaluation of audio-visual rights. If the value of rights declines, this will very likely lead to less pre-financing, thus less production, and also less promotion by distributors, and therefore a poorer offer of content for consumers.**