



**Europa Distribution Contribution to the EC Consultation
Green Paper on the online distribution of audiovisual works in the
European Union: opportunities
and challenges towards a digital single market
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EUROPA DISTRIBUTION

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WHO ARE WE?

Europa Distribution is a professional European network of independent distributors headed by award winning filmdirector 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)
- Of the European films included in the Official Selection of the Cannes Film Festival during the past three years, roughly 85% were distributed by independents.
- Of 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 Alomodovar, 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 who performs three functions:

- Financing the production of films through a guaranteed minimum (MG): the amount of the MG is based on the recoupment anticipated by the distributor on all the rights. This means that the MG will automatically be decreased if the distributor does not get the VOD rights and cannot count on the VOD recoupment.
- Financing the release of the films (promotion & advertising, manufacturing of prints)
- Maintaining relationships with cinemas.

In this sense, they're the ones in the cinematographic chain with marketing expertise and knowledge of their territory. Depending on the contracts they have with producers, the distributors may have the following rights: theatrical distribution, DVD, VOD, TV (free or pay TV), Internet.



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 less revenue and this has to be taken into account.**

Our contribution will focus in particular on the activity of distributors and we'll let our colleagues from other sectors of the industry answer for their own fields of activity.

First of all, we would like to ask the European Commission to carry out a European study on the actual demand for trans-border access to audiovisual works and the need for a single digital market and share the results with us. As distribution and film professionals, we have the feeling that we're talking about a niche market and we're afraid to see the whole audiovisual sector put into question for a niche market.

MULTITERRITORIAL LICENSING & WINDOWS

There is currently no legal obstacle for multiterritorial licenses in terms of copyright. But market practices have established territorial licenses linked to the financing and distribution of audiovisual works.

Distribution is by nature a national activity, and pan-European distribution does not reflect the reality of the market today. Cinematographic distribution 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 to the different media exclusivities per window and per territory in return for their pre-financing of works.

In this sense, any questioning of the territorial exploitation of rights which forms the basis for the pre-financing of works would immediately lead to a drastic reduction in the production of European works. Pan-European licenses would favour cinema majors and blockbusters, as opposed to independent distributors and European films, and paradoxically impede the circulation of European films by endangering independent distributors & producers.

Territorial promotion is 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. Pan-European licenses would therefore give a serious competitive advantage to few organisations operating on a Europe-wide basis, i.e. the American majors, while seriously reducing the number and variety of European films released outside of their home country, of which there are already very few.

Regarding windows: this issue was not raised in the EC consultation on state aids, where it would have had its place. In addition, this point falls under the principle of subsidiarity



regarding culture and according to the specificities and local practices of the markets in the various Member States.

NEW DISTRIBUTION CHANNELS

Of course, new distribution channels do challenge current practices.

But there is absolutely no need for a deep legal change to adapt to those new distribution channels.

We think it would be much more beneficial to have those new distribution channels getting involved in financing and investing in the production of European works: this would probably be the best way for them to secure the access to European works. This is how the whole industry works today, with distributors, dvd-distributors, TV channels, etc putting MG (minimum guarantees) in the production in order to secure their line-up.

Also, new measures should be taken to ensure the share and/or prominence of European works in the catalogue 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). 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.

CLEARING OF RIGHTS

The clearing of rights at European level can be a challenge.

This is why we think that the creation of an online database aggregating the rights holder information would be very useful for the whole industry.

But this kind of database needs substantial financial resources in order to be created, managed, regularly updated, and used.

In fact, as Europa Distribution, we have had some experience with a database – CIDINET – that we created 2 years ago, with the support of the MEDIA Programme of the European Union.

CIDINET (www.cidinet.eu) is dedicated to the sharing of information on the promotional and technical material created by European distributors for their national releases.

The database, monitored by Europa Distribution, is based on a collaborative approach, i.e. distributors are the ones who are supposed to update their line-up, the release dates of their films, and the material created for the releases.

After 2 years of existence, we've realized that the collaborative approach was not enough to have an exhaustive database. The problem is that most European film companies are independent companies with few staff, so they basically never have time to put their information online.

This made us realize that this kind of database actually requires full time employees to manage, administrate and update the database. Once the distributors see that the database is



exhaustive, that they can find on it useful information for their own releases, then – and only then – they might be ready to update their own information. The database has to prove its own added value first in order to be adopted by the users.

A database bringing together information on rights holders in European territories would be a very valuable tool. But this database has to be given enough financial resources to be developed efficiently and managed by specific staff.